

RESOLUTION NO. 12-2022

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY OF MESQUITE; AUTHORIZING THE CITY MANAGER TO FINALIZE, EXECUTE, AND ADMINISTER AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (CHAPTER 380 AGREEMENT) FOR SUCH PURPOSES WITH DG MESQUITE III PROPERTY OWNER, L.P. (MESQUITE AIRPORT LOGISTICS CENTER), A DELAWARE LIMITED PARTNERSHIP, FOR THE DEVELOPMENT OF APPROXIMATELY 86.5 ACRES OF REAL PROPERTY LOCATED AT OR ABOUT 1900 AIRPORT BOULEVARD AND 1800 BERRY ROAD IN THE CITY INCLUDING THE PURCHASE OF APPROXIMATELY 45.5 ACRES OF CITY-OWNED PROPERTY; AND AUTHORIZING THE CITY MANAGER TO FINALIZE, EXECUTE, AND ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the City of Mesquite, Texas (the “**City**”), and other municipalities to establish and provide for the administration of programs that promote local economic development and stimulate business and commercial activity; and

WHEREAS, on July 2, 2018, by City Ordinance No. 4579, the City created Reinvestment Zone Number Twelve, City of Mesquite, Texas (IH-20 Business Park) (the “**TIRZ**”), a tax increment reinvestment zone created pursuant to Chapter 311 of the Texas Tax Code, to promote development or redevelopment of the area within the TIRZ (the “**Zone**”), and established a Board of Directors for the TIRZ (the “**TIRZ Board**”); and

WHEREAS, on July 6, 2021, by City Ordinance No. 4876, the Zone’s boundaries were enlarged to include, among other areas, approximately 828 acres of noncontiguous land in and around Mesquite Metro Airport, including but not limited to the City-owned 48 acres referenced below; and

WHEREAS, on July 6, 2021, the TIRZ Board prepared and adopted a project plan and reinvestment zone financing plan for the Zone (the “**Project and Financing Plan**”), submitted it to the City Council for approval and the City Council approved the Project and Financing Plan on July 6, 2021, by City Ordinance No. 4877; and

WHEREAS, to facilitate development within the Zone, the Project and Financing Plan contemplates conveyance of City-owned property; and

WHEREAS, the City owns and operates the Mesquite Metro Airport located at 1340 Airport Boulevard, Mesquite, Texas 75181 (“**Airport**”), and promotes development of the surrounding area; and

WHEREAS, DG Mesquite III Property Owner, L.P. (Mesquite Airport Logistics Center), a Delaware limited partnership (the “**Developer**”), is presenting to the City Council a proposed agreement providing economic development incentives to the Developer for the development of approximately 86.5 acres of real property located at or about 1900 Airport Boulevard and 1800 Berry Road in the City and including the purchase of approximately 45.5 acres of City-owned property (collectively the “**Property**”) for the total fair market value of approximately \$2,280,000.00 (the “**Agreement**”); and

WHEREAS, the Developer has agreed to construct three Class A industrial buildings having a cumulative minimum of 1,300,000 square feet on the Property at a minimum capital investment cost of \$72,000,000.00, in addition to improving Airport Boulevard and the existing water line adjacent to Berry Road at a total estimated cost of approximately \$2,300,000.00; and

WHEREAS, the City would like to encourage development of the Property for the public purposes of creating new employment opportunities in the City, increasing the City’s ad valorem real and personal property tax base, promoting development and stimulating business and commercial activity in the City, by granting certain economic development incentives to the Developer, upon satisfaction of certain conditions including completion of the projects, conveying to the Developer for fair market value the approximately 45.5 acres of City-owned property and providing the Developer economic development grants for development fees, excluding impact fees, not to exceed \$250,000.00, and reimbursing to the Developer the purchase price for the City-owned 45.5 acres in the approximate amount of \$2,280,000; and

WHEREAS, the terms and conditions of the above-described economic development agreement shall be incorporated into an agreement with such other terms and conditions as the City Manager deems appropriate (the “**Agreement**”); and

WHEREAS, after holding a public hearing and upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement will assist in implementing a program whereby local economic development will be promoted, and business and commercial activity will be stimulated in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. The facts, findings, and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct and are incorporated and adopted as part of this resolution for all purposes.

SECTION 2. The City Council finds that the terms of the proposed Agreement by and between the City and the Developer will benefit the City and its citizens and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

SECTION 3. That the City Manager is hereby authorized to negotiate and finalize the Agreement to be consistent with the terms and conditions as presented to the City Council and included herein, and these terms and conditions are hereby found to be acceptable and in the best interest of the City and its citizens.

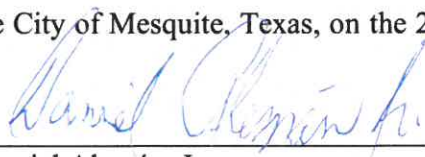
SECTION 4. Subject to the TIRZ Board's approval of an amendment to the TIRZ Project and Financing Plan consistent with the Agreement, and further subject to the City Council's approval of the TIRZ Project and Financing Plan amendment, the City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development incentives to the Developer and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions outlined in the Agreement.

SECTION 5. Subject to adoption of the TIRZ Project and Financing Plan amendment required by Section 4 herein, the City Manager is hereby authorized to: (i) finalize and execute the Agreement; and (ii) take such actions and execute such documents as are necessary or advisable to consummate the transactions contemplated by the Agreement, including but not limited to those necessary to convey the approximately 45.5 acres of City-owned property to the Developer.

SECTION 6. The City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$50,000.00; (iii) approve or deny any matter in the Agreement that requires the consent of the City with the exception of any assignment of the Agreement that requires the consent of the City pursuant to the terms of the Agreement shall require City Council approval; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 6 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 6 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council's legislative functions.

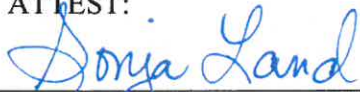
SECTION 7. That the sections, paragraphs, sentences, clauses and phrases of this resolution are severable and, if any phrase, clause, sentence, paragraph or section of this resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal or unenforceable provision had never been included in this resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 21st day of February 2022.



Daniel Alemán, Jr.
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

EXHIBIT A

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

(CHAPTER 380 AGREEMENT)

BETWEEN

THE CITY OF MESQUITE, TEXAS,

AND

DG MESQUITE III PROPERTY OWNER, L.P.

(MESQUITE AIRPORT LOGISTICS CENTER)

CITY OF MESQUITE, TEXAS
AND
DG MESQUITE III PROPERTY OWNER, L.P.

CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AND AGREEMENT

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** (hereinafter referred to as the “**Agreement**”) is made and entered into by and between the **CITY OF MESQUITE, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the “**City**”), and **DG MESQUITE III PROPERTY OWNER, L.P.**, a Delaware limited partnership (hereinafter referred to as the “**Developer**”), for the purposes and considerations stated below:

WHEREAS, the Developer covenants and agrees to construct or cause to be constructed three Class A industrial buildings having a cumulative minimum of 1,300,000 square feet (hereinafter referred to as the “**Qualified Expenditures**”), as more particularly described and/or depicted in **Exhibit A** of this Agreement, two (2) buildings of at least 330,000 square feet each located on approximately forty-five (45) acre tracts of land in the William S. Robinson Survey, Abstract No. 1262, and Sam Houston Survey, Abstract No. 657, City of Mesquite, Dallas County, Texas, consisting of the Thirty-Three Acre Tract and Twelve and One Half Acre Tract (both as further defined below), and one (1) building of at least 640,000 square feet located on approximately forty-one (41) acres owned by Developer in the John Pike Survey, Abstract No. 1174, City of Mesquite, Dallas County, Texas, as more particularly described and/or depicted in **Exhibit B** of this Agreement, which is attached hereto and incorporated herein for all purposes, and having a street address of 1900 Airport Boulevard and 1800 Berry Road, Mesquite, Texas 75181 (hereinafter referred to as the “**Forty-One Acre Tract**”); and

WHEREAS, the Developer covenants and agrees consistent with this Agreement to acquire from the City the approximately 32.6243 acres or 1,421,113 square feet of land located in the William S. Robinson Survey, Abstract No. 1262 and Sam Houston Survey, Abstract No. 657, City of Mesquite, Dallas County, Texas, as described and depicted in **Exhibit C** of this Agreement, which is attached hereto and incorporated herein for all purposes (the “**Thirty-Three Acre Tract**”) for a purchase price of **One Million Six Hundred Eighty Thousand and No/100 Dollars (\$1,680,000.00)**. The parties acknowledge that the Thirty-Three Acre Tract is the “Remainder Land” under that certain Economic Development Program Agreement dated June 9, 2021 (the “**Existing 380 Agreement**”) between the City and NOTAIN REALTY (MESQUITE AIRPORT LOGISTICS CENTER), LIMITED PARTNERSHIP, a Delaware limited partnership (the Company thereunder), an affiliate of Developer which prior to the effective Date of this Agreement has assigned its rights in the Thirty-Three Acre Tract to Developer; and

WHEREAS, the Developer covenants and agrees consistent with this Agreement to purchase from the City 12.48 acres or 543,469 square feet of land located in the William S. Robinson Survey, Abstract No. 1262, City of Mesquite, Dallas County, Texas, as described and depicted in **Exhibit D** of this Agreement, which is attached hereto and incorporated herein for all purposes (the “**12.5 Acre Tract**”) for a purchase price of **Six Hundred Thousand and No/100**

Dollars (\$600,000.00); and

WHEREAS, the Developer covenants and agrees to construct or cause to be constructed on the Forty-One Acre Tract, the 12.5 Acre Tract, and the Thirty-Three Acre Tract (hereinafter collectively referred to as the “**Property**” or “**Properties**”) the Qualified Expenditures in the minimum amount of **Seventy-Two Million and No/100 Dollars (\$72,000,000.00)**; and

WHEREAS, the Developer covenants and agrees to construct of cause to be constructed, and dedicate to the City, a continuation of the existing Airport Boulevard from Scyene Road to a point south of the entrance of Dalfen Building 5, as described and depicted in *Exhibit E* of this Agreement, which is attached hereto and incorporated herein for all purposes (the “**Airport Boulevard Expenditures**”) for an estimated cost of **One Million Seven Hundred Thousand and No/100 Dollars (\$1,700,000.00)**; and

WHEREAS, the Developer covenants and agrees to construct of cause to be constructed, and dedicate to the City, the upsizing of the existing water line located adjacent to Berry Road within the City from Edwards Church Road to the existing sixteen-inch (16”) water line stub, located in Berry Road approximately 2,400 feet southeast of Edwards Church Road, as depicted in *Exhibit F* of this Agreement, which is attached hereto and incorporated herein for all purposes (the “**Berry Road Water Line**”) for an estimated cost of **Five Hundred Ninety-Seven Thousand Nine Hundred Ten and 22/100 Dollars (\$597, 910.22)**; and

WHEREAS, in accordance with the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code, as amended, and by Ordinance No. 4579, the City previously established the IH-20 Business Park Reinvestment Zone Number Twelve, City of Mesquite, Texas (the “**Zone**”) to promote development or redevelopment in the Zone pursuant to Ordinance No. 4579, approved by the City Council of the City on July 2, 2018; and

WHEREAS, on July 6, 2021 and by Ordinance No. 4876, the City enlarged the boundaries of the Zone and the Properties are located within the Zone; and

WHEREAS, Section 272.001(b)(6) of the Texas Local Government Code provides the authority for the City to convey the Thirty-Three Acre Tract and the 12.5 Acre Tract to the Developer without complying with the general notice and bidding requirements applicable to municipal sales of real property; and

WHEREAS, the Developer desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code; and

WHEREAS, the City desires to provide, pursuant to Chapter 380 of the Texas Local Government Code, an incentive to Developer to develop the Properties; and

WHEREAS, the City possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of Mesquite, Texas; and

WHEREAS, the City has determined that a grant of funds to the Developer will serve the public purpose of promoting local economic development, with the development and diversification of the economy of the State and City, will eliminate unemployment and underemployment in the State and City, and will enhance business and commercial activity within the City of Mesquite, Texas; and

WHEREAS, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Mesquite, Texas, and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code, and further, is in the best interests of the City and the Developer; and

WHEREAS, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Mesquite, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution by assisting in the development and diversification of the economy of the State, by eliminating unemployment or underemployment in the State, and by the development or expansion of commerce within the State.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date of this Agreement, and shall continue thereafter until **December 31, 2024**, unless terminated sooner under the provisions hereof. In the event this Agreement is not fully executed within sixty (60) days after approval by the City Council of the City of Mesquite, Texas, then this Agreement shall be null and void, and shall have no effect on either party. This Agreement may be terminated by the City if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement, or any part thereof, invalid, illegal or unenforceable.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Agreement.** The word “Agreement” means this Chapter 380 Economic Development Program and Agreement, authorized by Chapter 380 of the Texas Local Government Code, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (b) **Airport Boulevard Expenditures.** The words “Airport Boulevard Expenditures” mean those expenditures made by the Developer consisting of the continuation of the existing Airport Boulevard from Scyene Road to a point south of the entrance of Dalfen Building 5, as described and depicted in *Exhibit E* of this Agreement, which is attached hereto and incorporated herein for all purposes.
- (c) **Berry Road Water Line.** The words “Berry Road Water Line” mean the upsizing of the existing water line located adjacent to Berry Road within the City from Edwards Church Road to the existing sixteen-inch (16”) water line stub, located in Berry Road approximately 2,400 feet southeast of Edwards Church Road, as depicted in *Exhibit F* of this Agreement, which is attached hereto and incorporated herein for all purposes.
- (d) **Capital Investment Certificate.** The words “Capital Investment Certificate” mean a certificate in such form as is reasonably acceptable to the City executed by the Developer certifying the amount of expenditures made by the Developer in connection with the construction of the Qualified Expenditures, the Airport Boulevard Expenditures, and the Berry Road Water Line as of the date of such certificate (each a “**Capital Investment Certificate**”) provided, however, the Parties agree that only expenditures capitalized as capital assets on the books of the Developer in accordance with generally accepted accounting principles shall be included in the expenditures reported in each Capital Investment Certificate.
- (e) **Certificate of Occupancy.** The words “Certificate of Occupancy” mean a final Shell Certificate of Occupancy for Building 3, Building 4, and Building 5 issued by the City to the Developer after the construction of the Qualified Expenditures located on the Property as required by Section 4(b) of this Agreement, in compliance with the City’s building, health, safety, fire and other codes.
- (f) **City.** The word “City” means the City of Mesquite, Texas, a Texas home-rule municipality. For the purposes of this Agreement, City’s address is 1515 N. Galloway, Mesquite, Texas 75149.
- (g) **City-Owned Properties.** The words “City-Owned Properties” mean collectively the Thirty-Three Acre Tract and 12.5 Acre Tract.

- (h) **City Regulations.** The words “City Regulations” mean all ordinances, rules, regulations and zoning of the City, as may be amended from time to time, including, without limitation. City codes, design standards, engineering standards, engineering design manual, drainage requirements, uniform and international building and construction codes duly adopted by the City, all of which shall be applied to development of the Qualified Expenditures, the Airport Boulevard Expenditures, and the Berry Road Water Line as required by this Agreement.
- (i) **Commence Construction.** The words “Commence Construction” mean obtain from the City a building permit for the Property.
- (j) **Developer.** The word “Developer” means DG MESQUITE III PROPERTY OWNER, L.P., a Delaware limited partnership, whose address for the purposes of this Agreement is 17304 Preston Road, Suite 550, Dallas, Texas 75252.
- (k) **Development Standards.** The words “Development Standards” shall mean the development standards for the Qualified Expenditures attached hereto as *Exhibit J* and incorporated herein by reference. Any changes to the Development Standards require the written consent of both Parties.
- (l) **Economic Development Incentive.** The words “Economic Development Incentive” mean the amounts payable by City to Developer consistent with this Agreement.
- (m) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the City and Developer.
- (n) **Environmental Laws.** The words “Environmental Laws” mean all environmental laws, rules and regulations with respect to health, the environment, and endangered species and wetlands including, without limitation, (a) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9601, et. seq.), as amended; (b) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901, et. seq.), as amended; (c) the Endangered Species Act (16 U.S.C. §1531, et seq.), as amended; (d) the Hazardous Materials Transportation Act (49 U.S.C. § 5101, et. seq.), as amended; (e) the Clean Air Act of 1974 (42 U.S.C. § 7401, et. seq.), as amended; (f) the Clean Water Act, (33 U.S.C. §1251, et. seq.), as amended; (g) the Toxic Substances Control Act (15 U.S.C. § 2601, et seq.), as amended; (h) Chapter 361 of the Texas Health & Safety Code, as amended; (i) the Texas Water Code, as amended; (j) the Texas Natural Resource Code, as amended; (k) the Texas Solid Waste Disposal Act, as amended; and (l) all other federal, state and local laws, statutes, ordinances, rules, and regulations now existing and those promulgated in the future, as amended, that regulate the use, storage, treatment, generation, disposal, transportation, discharge, release, threatened release and/or remediation of Hazardous Substances as those terms and similar terms are defined or used in applicable

Environmental Laws.

- (o) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth in the section entitled “Events of Default” in this Agreement.
- (p) **Façade/Elevation Plan.** The words “Façade/Elevation Plan” mean that certain building façade/elevation plan for the Qualified Expenditures, a copy of such building façade/elevation plan being attached hereto as *Exhibit G* of this Agreement, which is attached hereto and is incorporated herein for all purposes.
- (q) **12.5 Acre Tract.** The words “12.5 Acre Tract” mean the 12.48 acres or 543,469 square feet of land located in the William S. Robinson Survey, Abstract No. 1262, City of Mesquite, Dallas County, Texas, as described and depicted in *Exhibit D* of this Agreement, which is attached hereto and incorporated herein for all purposes.
- (r) **Force Majeure Delay.** The words “Force Majeure Delay” shall mean any act of God (including weather delays beyond historic weather patterns, earthquake, fire, mechanical failure of equipment, disease and the like), labor strike or work stoppage or slowdown (including failure of building inspectors to reasonably process approvals that cause work stoppage), material shortages, sabotage, war, riot, pandemic (including the COVID-19 pandemic, to the extent of any delays resulting from the same that were not reasonably foreseeable as of the date hereof) moratorium, or governmental action or inaction or any other act of any third party that reasonably prevents or delays an action from being taken through no fault of Developer. Notwithstanding the foregoing, in no event will “Force Majeure Delay” include a governmental order that prevents Developer or its contractors or subcontractors from proceeding with the construction of the Qualified Expenditures or any improvements for the Project, as a result of the failure to comply with City Regulations by the Developer, its contractors or subcontractors. “Force Majeure Delay” shall not include: (1) any financial or economic hardship; (2) insufficiency of funds; (3) changes in market or economic conditions; (4) any default or failure (financial or otherwise) of the general contractor or any subcontractor, vendor or supplier of the Developer; or (5) any delay of the general contractor or any subcontractor, vendor or supplier of Developer, except for delay(s) as a result of any act or event defined herein as “Force Majeure Delay.”
- (s) **Forty-One Acre Tract.** The words “Forty-One Acre Tract” mean the approximately forty-one (41) acres in the John Pike Survey, Abstract No. 1174, City of Mesquite, Dallas County, Texas, as more particularly described and/or depicted in *Exhibit B* of this Agreement, which is attached hereto and incorporated herein for all purposes, and having a street address of 1900 Airport Boulevard and 1800 Berry Road, Mesquite, Texas 75181.
- (t) **Landscape Plan.** The words “Landscape Plan” mean the landscape plan attached hereto as Exhibit K and incorporated herein by reference. Any changes to the Landscape Plan

require the written consent of both parties.

- (u) **Maximum Lawful Rate.** The words “Maximum Lawful Rate” mean the maximum lawful rate of non-usurious interest that may be contracted for, charged, taken, received or reserved by the City in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits the City to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law).
- (v) **Project.** The word “Project” means the Qualified Expenditures, the Airport Boulevard Expenditures, and the Berry Road Water Line as required by this Agreement.
- (w) **Property.** The word “Property” or “Properties” mean collectively the Forty-One Acre Tract, the 12.5 Acre Tract, and the Thirty-Three Acre Tract.
- (x) **Qualified Expenditures.** The words “Qualified Expenditures” mean those expenditures consisting of the construction of a minimum of 1,300,000 square feet of Class A industrial space located on the Properties, as generally depicted in *Exhibit A* of this Agreement, which is attached hereto and incorporated herein for all purposes. One (1) building of at least 620,000 square feet shall be constructed on the Forty-One Acre Tract, as described and depicted as the Industrial Building 5 in *Exhibit A* (also referred to as “Building 5”). Two (2) buildings of at least 340,000 square feet each shall be constructed on the Thirty-Three Acre Tract, as described and depicted as Industrial Building 3 (also referred to as “Building 3”) and Industrial Building 4 in *Exhibit A* (also referred to as “Building 4”). The Qualified Expenditures shall comply with all City, county, state and federal development standards, architectural standards, and applicable law, including City’s zoning ordinance and landscape plan requirements. The term “Qualified Expenditures” must be capital in nature, and does not include land acquisition costs or soft costs.
- (y) **Roadway Impact Fees.** The words “Roadway Impact Fees” mean the impact fees charged by the City to the Developer to fund or recoup all or part of the cost of roadway capital improvements or roadway facility expansions necessitated by and attributable to the Qualified Expenditures located on the Property pursuant to the City’s Impact Fee Ordinance Nos. 4366 and 4756, as now and hereafter amended.
- (z) **Sewer Impact Fees.** The words “Sewer Impact Fees” mean the impact fees charged by the City to the Developer to fund or recoup all or part of the cost for wastewater or sewer facilities necessitated by and attributable to the Qualified Expenditures located on the Property pursuant to the City’s Impact Fee Ordinance Nos. 4366 and 4756, as now and hereafter amended.
- (aa) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.
- (bb) **Thirty-Three Acre Tract.** The words “Thirty-Three Acre Tract” mean the approximately

32.6243 acres or 1,421,113 square feet of land located in the William S. Robinson Survey, Abstract No. 1262 and Sam Houston Survey, Abstract No. 657, City of Mesquite, Dallas County, Texas, as described and depicted in **Exhibit C** of this Agreement, which is attached hereto and incorporated herein for all purposes.

- (cc) **Water Impact Fees.** The words “Water Impact Fees” mean the impact fees charged by the City to the Developer to fund or recoup all or part of the cost for water facilities necessitated by and attributable to the Qualified Expenditures located on the Property pursuant to the City’s Impact Fee Ordinance Nos. 4366 and 4756, as now and hereafter amended.
- (dd) **Zone.** The word “Zone” means the IH-20 Business Park Reinvestment Zone Number Twelve, City of Mesquite, Texas, created pursuant to Ordinance No. 4579, approved by the City Council of the City on July 2, 2018, as amended.

SECTION 4. AFFIRMATIVE OBLIGATIONS OF DEVELOPER.

The Developer covenants and agrees with City that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Construction of Qualified Expenditures.** Developer covenants and agrees to construct or cause to be constructed the Qualified Expenditures located on the Property. Developer covenants and agrees to Commence Construction of Building 3 by **September 10, 2022**, and complete construction of Building 3 by **December 31, 2023**. Developer covenants and agrees to Commence Construction of Building 4 by **May 1, 2022**, and complete construction of Building 4 by **June 12, 2023**, both subject to a day-for-day extension for Force Majeure Delay. And, Developer covenants and agrees to Commence Construction of Building 5 by **November 20, 2022**, and complete construction of Building 5 by **September 30, 2023**, both subject to a day-for-day extension for Force Majeure Delay. In addition, Developer covenants and agrees to submit to the City a Capital Investment Certificate in a form acceptable to the City for the Qualified Expenditures made to the Property in the minimum amount of **Seventy-Two Million and No/100 Dollars (\$72,000,000.00)** by the later of (x) **February 1, 2024** and (y) the date that is five (5) months after the completion of construction of Building 5 as contemplated and permitted by this Agreement.
- (b) **Compliance with Standards and Certificate of Occupancy.** Developer covenants and agrees to construct the Qualified Expenditures in compliance with the Development Standards, Façade/Elevation Plan, Landscape Plan and City Regulations. Developer further covenants and agrees to obtain or cause to be obtained from the City a Certificate of Occupancy for a minimum of 1,300,000 square feet of commercial or industrial space located on the Property by **December 31, 2023**, subject to a day-for-day extension for Force Majeure Delay.

- (c) **Airport Boulevard Expenditures.** Developer covenants and agrees to construct or cause to be constructed the Airport Boulevard Expenditures, as depicted in *Exhibit E* of this Agreement. Developer covenants and agrees to dedicate all improvements to the City. Developer covenants and agrees to comply with all applicable development standards, including the City's Engineering Design Manual in the reconstruction of said Airport Boulevard Expenditures. Developer covenants and agrees to commence construction by **August 12, 2022**, and complete construction of said Airport Boulevard Expenditures by **May 31, 2023**, both subject to a day-for-day extension for Force Majeure Delay. The Airport Boulevard Expenditures shall have been: (i) completed in accordance with all applicable City standards, ordinances and regulations; (ii) dedicated to the City; and (iii) accepted in writing by the City, not to be unreasonably withheld. Developer agrees to acquire at Developer's expense any and all easements, rights-ways or other property interests necessary for the Airport Boulevard Expenditures, if any.
- (d) **Berry Road Water Line.** Developer covenants and agrees to construct or cause to be constructed the Berry Road Water Line, as depicted in *Exhibit F* of this Agreement, which is attached hereto and incorporated herein for all purposes. The Berry Road Water Line will be approximately 2,400 linear feet in length and be constructed of twelve-inch (12") PVC DR 14 Class 200. Developer covenants and agrees to commence construction by **July 2, 2022**, and to complete construction of said Berry Road Water Line by **May 31, 2023**, both subject to a day-for-day extension for Force Majeure Delay, and in accordance with all applicable City standards, ordinances and regulations. Developer agrees to acquire at Developer's expense any easements needed for the Berry Road Water Line, if any.
- (e) **Construction Requirements for the Airport Boulevard Expenditures and Berry Road Water Line.**
- (1) Prior to Commencement of Construction of any Airport Boulevard Expenditures and Berry Road Water Line, Developer shall make, or cause to be made, application for any necessary permits and approvals required by the City and any other applicable governmental authorities to be issued for the construction of said improvements and shall obligate each general contractor, architect, and consultants performing work in connection with such improvements to obtain all applicable permits, licenses or approvals as required by City Regulations. Developer shall require or cause the design, inspection, and supervision of the construction of the improvements to be undertaken in accordance with all City Regulations.
 - (2) Prior to Commencement of Construction of the Airport Boulevard Expenditures and Berry Road Water Line, Developer shall cause the contractors and subcontractors performing work in connection with the construction of such improvements to purchase and maintain payment, performance and two-year maintenance bonds (the "**Bonds**") in the penal sum of one hundred percent (100%) of the amount set forth in each construction contract for the improvements. The

Bonds shall be written on forms approved for use by the City and satisfactory to the City Attorney. Any surety company through which a bond is written shall be a surety company duly authorized to conduct an insurance business in the State of Texas and licensed to issue surety bonds in the State of Texas, provided that the City Attorney has the right to reject any surety company regardless of such company's authorization to do business in Texas. Should it appear to the City that at any time during the existence of this Agreement, the surety on the Bonds has become insolvent, bankrupt, or otherwise financially unable to perform its obligations under the Bonds, the City may demand that Developer furnish additional or substitute surety through an approved surety company satisfactory to the City Attorney; the act of the City with reference to demanding additional or substitute surety shall never be construed to relieve the original surety of its obligations under the Bonds. The Bonds issued with respect to the construction of the improvements shall be delivered to the City prior to the commencement of construction of said improvements.

- (3) **Requirements.** In connection with the Airport Boulevard Expenditures and Berry Road Water Line and completion thereof, the Developer shall have: (i) submitted to the City unit prices for the work to be performed pursuant to the construction contract(s) for the improvements and the City shall have approved such unit prices in writing as being reasonable; (ii) submitted to the City a payment bond and a performance bond in form reasonably acceptable to the City Attorney in the amount equal to one hundred percent (100%) of the contract amount for the construction of the improvements; (iii) complied in all respects with the Project Closeout and Acceptance Requirements set forth in *Exhibit H* attached hereto and made a part hereof for all purposes (the "**Closeout and Acceptance Requirements**"); (iv) complied in all respects with the Requirements for Record Drawings and Plats for Private Development Projects attached hereto as *Exhibit I* and made a part hereof for all purposes (the "**Record Drawings and Plat Requirements**"); and (v) paid all contractors, subcontractors, suppliers, laborers and materialmen for all labor and materials in connection with the construction of the Airport Boulevard Expenditures.
- (4) The following requirements apply to construction contracts for the Airport Boulevard Expenditures and Berry Road Water Line improvements:
 - (a) All plans and specifications for the improvements shall comply with all City Regulations and shall be subject to the review and approval of the City prior to the issuance of any permits; and
 - (b) Each construction contract shall provide that the contractor is an independent contractor, independent of and not the agent of the City, and that the contractor is responsible for retaining, and shall retain, the services of necessary and appropriate architects and engineers; and

- (c) Each construction contract shall provide that the contractor shall indemnify the City and City related parties for any costs or liabilities thereunder and for the negligent acts or omissions of the contractor and the contractor's agents.
- (5) Developer shall use commercially reasonable efforts to ensure at all times during construction that access to and from the Airport using Airport Blvd. to and from Scyene Road is maintained for the public and emergency responders and that such access complies with all City Regulations and applicable state and federal laws and regulations.
- (6) Upon completion of construction of the improvements, Developer shall provide the City with a final cost summary of the improvements project costs incurred and paid in connection with the construction of the improvements and provide proof that all amounts owing to contractors and subcontractors have been paid in full evidenced by "all bills paid" affidavits executed by Developer and/or its contractors with regard to the improvements.
- (7) Developer shall provide the City with reasonable advance notice of any regularly scheduled construction meetings regarding the improvements, and shall permit the City to attend and observe such meetings as the City so chooses in order to monitor the project, and shall provide the City with copies of any construction schedules as are discussed and reviewed at any such regularly scheduled construction meeting.
- (8) Unless otherwise approved in writing by the City, all improvements shall be constructed and dedicated to the City in accordance with City Regulations. Developer agrees the improvements shall not have a lien or cloud on title upon their dedication and acceptance by the City.
- (9) To the extent fee title is owned by Developer, Developer shall dedicate or convey by final plat or separate instrument, without cost to the City and in accordance with City Regulations. the rights-of-way and easements necessary for the construction, operation, and maintenance of the road, water. drainage and sewer improvements constructed by Developer at the completion of construction of such improvements and upon acceptance by the City. To the extent fee title is owned by the City or any other third party. Developer will reasonably cooperate in causing the foregoing to occur.
- (10) It is understood and agreed by and among the Parties that Developer is acting independently in the design. construction and development of the improvements and the City assumes no responsibility or liability to any third parties or Developer in connection with Developer's obligations hereunder. Developer shall use

commercially reasonable efforts to cause all of its contractors, architects, engineers, and consultants to agree in writing that they will look solely to Developer, not to the City, for payment of all costs and claims associated with construction of the improvements.

- (11) The Parties agree that the Airport Boulevard Expenditures and Berry Road Water Line were not a condition of approval of the Project but are only a condition precedent to the payment of the Economic Development Incentive pursuant to this Agreement and accordingly V.T.C.A., Local Government Code § 212.904 and V.T.C.A. and Local Government Code § 395.023 do not apply provided, however, in the event a court of competent jurisdiction determines that V.T.C.A., Local Government Code § 212.904 and/or V.T.C.A. Local Government Code § 395.023 apply, the Parties agree that payment by the City to the Developer of said Economic Development Incentive shall satisfy all requirements under V.T.C.A., Local Government Code § 212.904 and V.T.C.A., Local Government Code § 395.023.
- (f) **Timely Payment of City Development Fees.** The Developer covenants and agrees to timely pay to the City all impact fees, permit fees, development fees, review fees and inspection fees, including, without limitation, all Roadway Impact Fees, Sewer Impact Fees, and Water Impact Fees, in connection with the Project. On or after completion of the Project and receipt of a certificate of occupancy consistent with Section 4(b) of this Agreement, the Developer covenants and agrees to submit proof of payment of said fees and the Capital Investment Certificate to the City for payment of the economic development grant provided for in Section 6(a) of this Agreement (the “**Reimbursement Request**”).
- (g) **Acquisition of Thirty-Three Acre Tract.** The Developer covenants and agrees to acquire from the City the Thirty-Three Acre Tract for a purchase price of **One Million Six Hundred Eighty Thousand and No/100 Dollars (\$1,680,000.00)**, which is the fair market value, by **August 1, 2022**, or other date mutually agreed to by the parties. The Developer covenants and agrees to execute a real estate sales contract acceptable to the Developer and City for the purchase and sale of the Thirty-Three Acre Tract on terms mutually acceptable to the parties.
- (h) **Acquisition of 12.5 Acre Tract.** The Developer covenants and agrees to acquire from the City the Fifteen Acre Tract for a purchase price of **Six Hundred Thousand and No/100 Dollars (\$600,000.00)**, which is the fair market value, by **August 1, 2022**, or other date mutually agreed to by the parties. The Developer covenants and agrees to execute a real estate sales contract acceptable to the Developer and City for the purchase and sale of the 12.5 Acre Tract on terms mutually acceptable to the parties.
- (i) **Acquisition of the City-Owned Properties.**

- (1) Purchase and Sale. To incentivize Developer to enter into this Agreement, construct the Qualified Expenditures and perform its covenants herein, and subject to the terms and conditions set forth herein, and provided (a) Developer has timely performed its covenants and obligations under this Agreement, (b) no Developer Event of Default then exists, or no event exists which, but for notice the lapse of time or both, would constitute a Developer Event of Default, (c) this Agreement is not terminated pursuant to a right herein, and (d) the sale of the City-Owned Properties to Developer is reasonably necessary to implement the Zone's Project Plan, the City agrees to sell the City-Owned Properties to the Developer and Developer agrees to purchase the City-Owned Properties from the City for fair market value purchase price as provided in this Agreement, which sale and purchase shall be pursuant to V.T.C.A., Local Government Code § 272.001 (b)(6). and pursuant to the terms herein.
- (2) Survey and Title Policy. Developer shall at its option and at its sole expense obtain a survey and title policy in connection with the closing of the purchase of the City-Owned Properties.
- (3) Closing and Closing Costs. Unless this Agreement is sooner terminated as provided herein, the closing of the purchase of the City-Owned Properties shall take place at the offices of the City or at a title company mutually acceptable to City and Developer at 10:00 a.m., local time, on or before the dates provided in Section 4(g) and 4(h) of this Agreement, or such earlier or later time and date as the Parties may mutually agree. At the closing, Developer shall deliver the fair market value purchase price as provided in this Agreement to the City in immediately available funds and the City shall deliver a Deed Without Warranty to Developer transferring the City-Owned Properties to Developer, subject to the terms and conditions provided herein. City and Developer shall each be responsible for all costs and expenses incurred by or on behalf of such Party in connection with the sale and purchase of the City-Owned Properties, including such Party's attorney's fees. City and Developer represent and warrant to each other that they have not and will not work with any broker relative to the sale and purchase of the City-Owned Properties and that no brokerage commission is or will be due and payable in connection with the sale and purchase of the City-Owned Properties by the City to Developer.
- (4) Deed. Pursuant to the execution and approval of appropriate sale and title transfer documents, the City will transfer the City-Owned Properties contemporaneously with payment of the applicable purchase price as provided in this Agreement. The purpose of the conveyance is to facilitate and incentivize the construction of the Qualified Expenditures, Airport Boulevard Expenditures and Berry Road Water Line and such transfer documents shall contain such terms, provisions and conditions as are acceptable to the City including, without limitation, the conveyance by the City to Developer shall be "**AS IS, WHERE IS**" and "**WITH**

ALL FAULTS," contain such disclaimers of representations and warranties, express and implied, as the City deems advisable. and include the reservation of easements and rights of way at no cost to the City for the benefit of the City and all public utilities over such portions of the City-Owned Properties as the City deems necessary and in locations agreeable to Developer (the "**Easement Tracts**") containing such terms as are acceptable to the City for access, ingress and egress to, from and upon the Easement Tracts for such purposes as the City deems advisable including, without limitation, constructing, reconstructing, inspecting, patrolling, maintaining, adding to, and removing public improvements.

(5) **Disclaimer of Representations and Warranties; Release; Waiver, Covenants and Agreements.**

(5.1) **Disclaimer of Representations and Warranties.** City makes no representation or warranty, express or implied, or arising by operation of law or otherwise, with respect to any matter concerning the City-Owned Properties, including, without limitation, the following: (i) title; (ii) habitability, marketability, merchantability, or suitability or fitness for a particular purpose or use; (iii) the nature and condition of the land including, without limitation, water, drainage and grading, soil and geology, zoning, annexation, extraterritorial jurisdiction and other zoning and jurisdictional issues, location of cemeteries, utility availability or hook-up, easement rights, flood plains (or portions of the land in a flood plain) and the costs and requirements of same, access to streets, costs of utilities, location of curb cuts and median breaks in streets, sewage facilities (including, without limitation, availability or non-availability of appropriate water and sewer capacity) or other governmental rights or obligations; (iv) the completeness, accuracy or approval of permits, surveys, plats, preliminary plats, pollution abatement plans, subdivision plans or reports; (v) tax consequences; (vi) the compliance of all or any part of the land with applicable Environmental Laws; (vii) the existence of asbestos, oil, arsenic, petroleum or chemical liquids or solids, liquid or gaseous products or Hazardous Substances as those terms and similar terms are defined or used in applicable Environmental Laws; (viii) the nature and extent of access to rights-of-way or utilities, availability of permits to access rights-of-way or utilities on the land, other property owned by City, or any land owned by third parties; (ix) easements, mineral interests, encumbrances, licenses, reservations, conditions or other similar matters; (x) compliance with any law, ordinance or regulation of any governmental entity or body; and/or (xi) claims, demands, or other matters relating to any restrictive covenants encumbering the land. The Parties agree the sale will be made on an "AS IS, WHERE IS" and "WITH ALL FAULTS" basis. The Parties agree the warranties and covenants set forth in § 5.023 of the Texas Property Code do not apply to the sale and purchase and that any warranties arising at common

law or implied as a result of § 5.023 of the Texas Property Code, as amended, or any successor statute, shall be excluded and excepted from the deed. Developer represents, covenants and agrees that prior to the execution of this Agreement that Developer has performed, or has had performed on Developer's behalf, all surveys, engineering reports, geotechnical studies, soils tests, environmental tests, and all other studies, tests, inspections and investigations of the land as Developer has determined was necessary or desirable in order for Developer to make its decision whether to purchase the City-Owned Properties. Developer acknowledges that Developer has had the full, complete and unfettered right to inspect the land to Developer's satisfaction and that the purchase price is in part based upon the fact that the sale of the land by the City to Developer shall be without warranty or representation. Developer agrees to rely only upon the Developer's own investigations, assessments and inspections as to the condition of the land, or Developer's own decision not to inspect any matter and Developer agrees that it is not relying on any representation, warranty, statement or non-assertion of City or City's officers, agents, representatives, employees, consultants, or independent contractors in making Developer's decision to purchase the land. DEVELOPER ACKNOWLEDGES THAT THE CITY HAS NOT MADE AND IS EXPRESSLY DISCLAIMING ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE TITLE, CONDITION, HABITABILITY, MARKETABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF THE CITY-OWNED PROPERTIES.

- (5.2) **Release.** CITY SHALL NOT BE LIABLE TO DEVELOPER FOR ANY LATENT OR PATENT DEFECTS OF THE CITY-OWNED PROPERTIES OR FOR ANY ERRORS, OMISSIONS, OR ON ACCOUNT OF ANY OTHER CONDITION AFFECTING THE CITY-OWNED PROPERTIES INCLUDING, BUT NOT LIMITED TO, THOSE MATTERS DESCRIBED IN THIS SECTION 4(i)(5), AND DEVELOPER, AND ANYONE CLAIMING BY, THROUGH OR UNDER DEVELOPER, HEREBY FULLY RELEASES CITY AND EACH CITY RELATED PARTY FROM ANY AND ALL CLAIMS AGAINST CITY AND EACH CITY RELATED PARTY FOR ANY COSTS, LOSSES, LIABILITIES, DAMAGES, EXPENSES, DEMANDS, ACTIONS OR CAUSES OF ACTION (INCLUDING, WITHOUT LIMITATION, ANY RIGHTS OF CONTRIBUTION) ARISING FROM OR RELATED TO ANY LATENT OR PATENT DEFECTS OF THE CITY-OWNED PROPERTIES OR FOR ANY ERRORS, OMISSIONS, OR OTHER CONDITIONS AFFECTING THE CITY-OWNED PROPERTIES, INCLUDING, BUT NOT LIMITED TO, THOSE MATTERS DESCRIBED IN THIS SECTION 4(i)(5) AND ANY ALLEGED NEGLIGENCE OF CITY OR ANY CITY RELATED PARTY. THIS COVENANT RELEASING CITY

AND EACH CITY RELATED PARTY SHALL BE SET FORTH IN THE DEED AS A COVENANT RUNNING WITH THE CITY-OWNED PROPERTIES AND SHALL BE BINDING UPON DEVELOPER, DEVELOPER'S SUCCESSORS AND ASSIGNS, AND ALL FUTURE OWNERS OF ALL OR ANY PORTION OF THE CITY-OWNED PROPERTIES.

- (5.3) **Waiver.** AFTER CONSULTATION WITH AN ATTORNEY OF COMPANY'S OWN SELECTION AND WITH RESPECT TO THE SALE AND PURCHASE OF THE LAND, COMPANY HEREBY VOLUNTARILY WAIVES COMPANY'S RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, § 17.41 *ET. SEQ.*, BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS.
- (6) Covenant and Agreement of Developer. Developer represents and warrants to City that Developer is acquiring the City-Owned Properties for investment, has knowledge and experience in financial and business real estate matters that enable Developer to evaluate the merits and risks of the transactions herein contemplated, and has bargained for and obtained a purchase price and agreement terms which make the limitations of Developer's recourse against City acceptable. Developer acknowledges that the limitations of Developer's recourse against City as set forth herein is a material part of the consideration for the execution and delivery of the City-Owned Properties deed by the City and is an integral part of the basis of the bargain between the City and Developer relating to the sale by the City and the purchase by the Developer of the City-Owned Properties.
- (7) Taxes. Developer shall be responsible for and shall pay all taxes assessed against the City-Owned Properties from and after the date of closing on the purchase of the City-Owned Properties. This provision shall expressly survive the closing of the purchase of the City-Owned Properties.
- (8) Failure to Purchase the City-Owned Properties. If Developer does not purchase the City-Owned Properties on or before **August 1, 2022**, in accordance with the terms and conditions set forth herein, then Developer's right to purchase the City-Owned Properties will automatically and immediately terminate without notice.
- (9) Time of the Essence. Time is of the essence with respect to the purchase of the City-Owned Properties.
- (i) **Performance.** Developer covenants and agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between the City and Developer.

SECTION 5. INSURANCE AND INDEMNIFICATION

- (a) **Insurance.** With no intent to limit any contractor's liability or obligation for indemnification, the Developer shall maintain or cause to be maintained, by the contractor(s) constructing the Airport Boulevard Expenditures and Berry Road Water Line, the types of coverage and amounts of insurance set forth in ***Exhibit E*** attached hereto and made a part hereof for all purposes, such insurance shall contain such terms and provisions as set forth on ***Exhibit E*** and shall be in full force and effect at all times during construction of the Airport Boulevard Expenditures and Berry Road Water Line.
- (b) **Waiver of Subrogation.** The worker's compensation, employers' liability and general liability insurance required pursuant to this Agreement shall provide for waivers of all rights of subrogation against the City as more fully set forth in ***Exhibit E***.
- (c) **Additional Insured.** As more fully set forth in ***Exhibit E***, the general liability and auto liability insurance coverage required pursuant to this Agreement shall include and name the City as an additional insured.
- (d) **Written Notice of Cancellation.** Each policy required by this Agreement, except worker's compensation and professional liability, shall be endorsed to provide the City sixty (60) days' written notice prior to any cancellation, termination or material change of coverage.
- (e) **Policies, Endorsements and Certificates of Insurance.** The Developer shall cause each contractor to deliver to the City the policies, copies of policy endorsements, and/or certificates of insurance evidencing the required insurance coverage before the commencement of construction of the Airport Boulevard Expenditures and Berry Road Water Line and within ten (10) days before expiration of coverage, the Developer shall cause each contractor to deliver renewal policies or certificates of insurance evidencing renewal and payment of the renewal premium. In addition, the Developer shall cause each contractor to provide the City with the Certificates of Insurance and policy endorsements for the insurance required herein (which request may include copies of such policies) within ten (10) business days after written request by the City.
- (f) **Carriers.** All policies of insurance required to be obtained by the Developer and its contractors pursuant to this Agreement shall be maintained with insurance carriers that are satisfactory to and as reasonably approved by City, and lawfully authorized to issue insurance in the State of Texas for the types and amounts of insurance required herein. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A-" or "VII" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City. All insurance coverage required herein shall be evidenced by a certificate of insurance and policy endorsements

submitted by the Developer's and its contractors' insurer or broker. Certificates of insurance and policy endorsements received from any other source will be rejected.

- (g) **INDEMNIFICATION. THE DEVELOPER AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, THE CITY'S COUNCIL MEMBERS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL THIRD PARTY LIABILITIES, DAMAGES, CLAIMS, DEMANDS, LOSSES, CAUSES OF ACTION, LAWSUITS, JUDGMENTS, FINES, PENALTIES AND COSTS INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND LITIGATION EXPENSES, FOR PERSONAL INJURY (INCLUDING DEATH) OF ANY PERSON OR DAMAGE TO OR LOSS OF OTHER PROPERTY ARISING FROM ANY ACT OR OMISSION ON THE PART OF THE DEVELOPER AND DEVELOPER'S OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS AND ITS CONTRACTORS' AND SUBCONTRACTORS' OFFICERS, AGENTS AND EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THE CONSTRUCTION OF THE QUALIFIED EXPENDITURES, AIRPORT BOULEVARD EXPENDITURES AND BERRY ROAD WATER LINE (EXCEPT WHEN SUCH THIRD PARTY LIABILITY, DAMAGES, CLAIMS, DEMANDS, LOSSES, CAUSES OF ACTION, LAWSUITS, JUDGMENTS, FINES, PENALTIES, OR COSTS ARISE FROM OR ARE ATTRIBUTED TO THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE OR ANY ACTIONS OF ANY INDEMNITEE FOLLOWING ANY PUBLIC DEDICATION AND ACCEPTANCE OF PUBLIC IMPROVEMENTS CONTEMPLATED HEREBY BY INDEMNITEE). NOTHING CONTAINED IN THIS SECTION SHALL CONSTITUTE A WAIVER OF ANY GOVERNMENTAL IMMUNITY OR DEFENSE AVAILABLE TO ANY INDEMNITEE UNDER TEXAS LAW. IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST ANY INDEMNITEE, DEVELOPER SHALL BE REQUIRED ON NOTICE FROM INDEMNITEE, TO DEFEND SUCH ACTION OR PROCEEDING AT DEVELOPER'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO INDEMNITEE. THE PROVISIONS OF THIS SECTION ARE NOT TO BE STRICTLY CONSTRUED, ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY THIRD PARTY. IF ANY PART OF THIS INDEMNITY IS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE INVALID OR UNENFORCEABLE FOR ANY REASON, THE REMAINING PORTION OF THIS INDEMNITY SHALL CONTINUE IN FULL FORCE AND EFFECT. THE PROVISIONS OF THIS SECTION SHALL EXPRESSLY SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.**

SECTION 6. AFFIRMATIVE OBLIGATIONS OF THE CITY.

City covenants and agrees with Developer that, while this Agreement is in effect, and provided Developer has timely complied with its obligations under this Agreement, it shall comply with the following terms and conditions:

- (a) **Building Permit or Other Development Fee Grant.** Provided (1) Developer has performed its covenants and obligations under this Agreement, including but not limited to compliance with each and every provision of Sections 4 and 5 of this Agreement, (2) no Event of Default has occurred with respect to the Developer and no event exists which, but for notice or the lapse of time or both, would constitute an Event of Default with respect to the Developer, and (3) this Agreement is not terminated pursuant to a right herein, the City covenants and agrees to provide Developer, subject to the annual appropriation of funds, an economic development grant in the amount of **one hundred percent (100%)** of the City's building permit or other development fees imposed by the City on the Developer for the Property pursuant to City policy. The grant shall exclude Water Impact Fees, Sewer Impact Fees, and Roadway Impact Fees. The foregoing grant to be paid by the City to Developer pursuant to this Agreement shall not exceed **Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00)**. The City covenants and agrees, subject to the annual appropriation of funds, to pay Developer said economic development grant within thirty (30) days of receipt of said Reimbursement Request consistent with Section 4(f) of this Agreement. The Economic Development Incentive is calculated based on the building permit fees or other development fees paid by the Developer to the City, excluding Water Impact Fees, Sewer Impact Fees, and Roadway Impact Fees. The grant of Economic Development Incentive payable by the City to the Developer as more fully set forth in this Agreement is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City but is payable only from funds of the City authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380. The payment of the Economic Development Incentive is subject to the City's appropriation of funds for such purpose to be paid in the budget year for which such installment is to be paid.
- (b) **Conveyance of the Thirty-Three Acre Tract.** The City covenants and agrees to convey to the Developer the Thirty-Three Acre Tract for a fair market value purchase price of **One Million Six Hundred Eighty Thousand and No/100 Dollars (\$1,680,000.00)** by **August 1, 2022**, or other date mutually agreed to by the parties. The City covenants and agrees to execute a real estate sales contract acceptable to the Developer and City for the purchase and sale of the Thirty-Three Acre Tract on terms mutually acceptable to the parties. The City covenants and agrees the sale of the Thirty-Three Acre Tract is authorized by section 272.001(b)(6) of the Texas Local Government Code.
- (c) **Conveyance of the 12.5 Acre Tract.** The City covenants and agrees to convey to the Developer the 12.5 Acre Tract for a fair market value purchase price of **Six Hundred Thousand and No/100 Dollars (\$600,000.00)** by **August 1, 2022**, or other date mutually

agreed to by the parties. The City covenants and agrees to execute a real estate sales contract acceptable to the Developer and City for the purchase and sale of the 12.5 Acre Tract on terms mutually acceptable to the parties. The City covenants and agrees the sale of the 12.5 Acre Tract is authorized by section 272.001(b)(6) of the Texas Local Government Code.

- (d) **Reimburse Thirty-Three Acre Tract and 12.5 Acre Tract Acquisition Costs.** Provided (1) Developer has performed its covenants and obligations under this Agreement, including but not limited to compliance with each and every provision of Sections 4 and 5 of this Agreement, (2) no Event of Default has occurred with respect to the Developer and no event exists which, but for notice or the lapse of time or both, would constitute an Event of Default with respect to the Developer, and (3) this Agreement is not terminated pursuant to a right herein, the City covenants and agrees to reimburse the Developer the sum of **Two Million Two Hundred Eighty Thousand and No/100 Dollars (\$2,280,000.00)** which represents the purchase price of the Thirty-Three Acre Tract and 12.5 Acre Tract by **December 31, 2024**. Developer covenants and agrees to submit to the City a reimbursement request to reimburse the Developer said sum of **Two Million Two Hundred Eighty Thousand and No/100 Dollars (\$2,280,000.00)** within thirty (30) days of acquisition of said tracts and completion of the Qualified Expenditures, Airport Boulevard Expenditures and Berry Road Water Line. The grant of Economic Development Incentive payable by the City to the Developer as more fully set forth in this Section is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City but is payable only from funds of the City authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380. The payment of the Economic Development Incentive is subject to the City's appropriation of funds for such purpose to be paid in the budget year for which such installment is to be paid.
- (e) **Performance.** City agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the Developer and City.

SECTION 7. CESSATION OF ADVANCES.

If City has made any commitment to make any financial assistance to the Developer, whether under this Agreement or under any other agreement, the City shall have no obligation to disburse any financial assistance specified in Section 6 of this Agreement if: (i) the Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

SECTION 8. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of Developer or City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or City to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and City is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to the City by or on behalf of Developer under this Agreement that is intentionally false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer is an Event of Default.
- (d) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from City and/or Dallas County Central Appraisal District is an Event of Default.

SECTION 9. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 8 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured, the non-defaulting party shall have the right to terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default. In the event of default under Section 4(c) or 4(d) of this Agreement, for failure to obtain any and all easements, rights-of-way or other property interests necessary for the Airport Boulevard Expenditures and Berry Road Water Line, the City may terminate this Agreement with written notice to the Developer of the default, and the Developer shall have thirty (30) days to cure said default.

City Remedies. In the event the Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by the City to Developer pursuant to Section 6 of this Agreement, shall become immediately due and payable by the Developer to the City, One Hundred percent (100%) of the financial incentive provided by the City to the Developer pursuant to Section 6 of this Agreement shall be repaid immediately to the City for an Event of Default under this Agreement plus interest at the rate equal to the lesser of: (a) the Maximum Lawful Rate; or (b) five percent (5%) per annum, such interest rate to be calculated on each incentive grant being recaptured from the date such incentive grant was paid by the City until the date repaid by the Developer to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate. The City shall have the right to exercise all remedies available by law to collect any sums due by the Developer to the City including, without limitation, all remedies

available pursuant to Chapter 2264 of the Texas Government Code.

Developer Remedies. Upon the occurrence of a City default that has continued uncured beyond any applicable grace or cure period, Developer shall have the right as its sole remedies to (a) terminate this Agreement by written notice to the City in which event neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement, and (b) recover from the City the amount of any payments then earned, owed and unpaid by the City as damages in accordance with the following provisions. The City and Developer acknowledge and agree that this Agreement is not a contract for goods or services and the City's immunity from suit is not waived pursuant to Subchapter I of Chapter 271, V.T.C.A., Local Government Code, as amended. Alternatively, if and only in the event a court of competent jurisdiction determines the City's immunity from suit is waived under Subchapter I of Chapter 271, V.T.C.A., Local Government Code, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement or otherwise to recover damages:

1. the total amount of damages, if any, awarded against the City shall be limited to actual damages in an amount of the incentive provided in Section 6(a) of this Agreement earned by the Developer and owed and unpaid by City;
2. any incentive payment past due and not paid following the required notice and cure period shall accrue interest at the lesser of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum beginning the day after expiration of the cure period until paid, and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate; and
3. the recovery of damages against the City shall not include attorneys' fees or consequential, punitive, exemplary, or speculative damages including, but not limited to, lost profits.

SECTION 10. MUTUAL REPRESENTATIONS.

By execution hereof, each signatory warrants and represents that they have the requisite authority to execute this Agreement and the related documents and that the representations made herein, and in the related documents, are true and accurate in all respects.

SECTION 11. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Dallas County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Dallas County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Authority.** The Developer represents that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. The Developer represents that it has the full power and authority to enter into and fulfill its obligations under this Agreement and that the Person signing this Agreement on behalf of the Developer has the authority to sign this Agreement on behalf of the Developer.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Development Standards.** The Parties acknowledge that effective September 1, 2019, the Legislature of the State of Texas enacted HB 2439, codified at V.T.C.A., Government Code, Title 10, Subtitle Z “Miscellaneous Provisions Prohibiting Certain Government Actions”, Chapter 3000 “Governmental Action Affecting Residential and Commercial Construction, regarding the regulation by municipalities of building products, materials, and aesthetic methods for residential and commercial buildings (the “Act”). Specifically, §3000.002 of the Act prohibits cities from adopting or enforcing a rule, charter provision, ordinance, order, building code or other regulation that prohibits or limits the use or installation of certain building products or materials or that establishes certain standards for building products, materials or aesthetic methods. The Developer acknowledges that, notwithstanding the Act, in consideration of the agreement of the City to pay the Economic Development Incentives to the Developer under the terms and subject to the conditions set forth in this Agreement, the Developer is contractually agreeing: (i) to construct the Qualified Expenditures in compliance with the Development Standards, and the Façade/Elevation Plan including, without limitation, the Developer agrees: (a) to use and install the paint colors, building products and materials as set forth in the Façade/Elevation Plan; and (b) to comply with the elevations, materials overlay, composition overlay, scale overlay, proportion overlay, rhythm overlay, transparency overlay, articulation overlay, expression overlay, color overlay, and aesthetic methods as set forth in the Façade/Elevation Plan. The Parties acknowledge that the provisions of this Section 11(g)

are material to the City's agreement to grant the Economic Development Incentives and is a bargained for consideration between the Parties.

- (h) **Entire Agreement.** This written agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.
- (i) **Interpretation.** Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.
- (j) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by a nationally recognized overnight delivery service with receipt requested, and addressed as follows:

if to the City:

City of Mesquite, Texas
1515 N. Galloway
Mesquite, Texas 75149
Attn: City Manager
Phone Number: (972) 216-6293
E-mail: _____

And copy to:

City of Mesquite, Texas
1515 N. Galloway
Mesquite, Texas 75149
Attn: City Attorney
Phone Number: (972) 216-6272
E-mail: _____

if to the Developer:

DG MESQUITE III PROPERTY OWNER, L.P.
17304 Preston Road, Suite 550
Dallas, Texas 75252
Attn: Jeffory Stringer and Joseph Walker
E-mail: jstringer@dalfen.com and
jwalker@dalfen.com

- (k) **Number and Gender.** Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

- (l) **Right to Offset.** The City shall have the right to offset any amounts due and payable by the City under this Agreement against any debt (including taxes) lawfully due and owing by the Developer to the City, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.
- (m) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.
- (n) **Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign or governmental immunity by virtue of its execution hereof.
- (o) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (p) **Waivers.** All waivers, to be effective, must be in writing and signed by the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any Party shall impair such right or remedy or be construed as a waiver of any such breach or a waiver of any breach theretofore or thereafter occurring.
- (q) **WAIVER OF CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES. THE DEVELOPER AND THE CITY AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, EACH PARTY MUTUALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES.**
- (r) **Form 1295 Certificate.** The Developer agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Developer agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.
- (s) **Undocumented Workers Provision.** The Developer certifies that Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement,

Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of any public subsidy provided under this Agreement to Developer plus six percent (6.0%), not later than the 120th day after the date the City notifies Developer of the violation.

- (t) **Non-Boycott of Israel Provision.** In accordance with Chapter 2270 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2270 of the Texas Government Code does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless Developer is not subject to Chapter 2270 of the Texas Government Code for the reasons stated herein, the signatory executing this Agreement on behalf of Developer verifies that Developer does not boycott Israel and will not boycott Israel during the Term of this Agreement.
- (u) **Iran, Sudan and Foreign Terrorist Organizations.** If § 2252.153 of the Texas Government Code is applicable to this Agreement, by signing below Developer hereby represent, verify and warrant that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under § 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a “foreign terrorist organization” as defined in § 2252.151 of the Texas Government Code.
- (v) **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller’s office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.
- (w) **Report Agreement to Comptroller’s Office.** City covenants and agrees to report this Agreement to the State Comptroller’s office within fourteen (14) days of the Effective Date of this Agreement, in accordance with Section 380.004 of the Texas Government Code, as added by Texas House Bill 2404, 87th Tex. Reg. Session (2021) (effective September 1, 2021).
- (x) **Verification Against Discrimination of Firearm or Ammunition Industries.** Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 19, 87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Developer employs at least ten (10) fulltime employees and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the Developer represents that: (1) the Developer does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the

Developer will not discriminate during the Term of the Agreement against a firearm entity or firearm trade association.

- (y) **Reservation of Legislative Authority.** Notwithstanding any provision in this Agreement, this Agreement does not control, waive, limit or supplant the City Council's legislative authority or discretion.
- (z) **Provision of Documentation.** Developer will deliver to the City within thirty (30) days after written request, copies of such invoices, payment records and other documentation as the City may reasonably request to confirm compliance by the Developer with its covenants in this Agreement.
- (aa) **No Partnership or Joint Venture.** It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.
- (bb) **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.
- (cc) **No Acceleration.** All amounts due pursuant to this Agreement and any remedies under this Agreement are not subject to acceleration.
- (dd) **No Third-Party Beneficiaries.** The Parties to this Agreement do not intend to create any third-party beneficiaries of this Agreement. This Agreement shall not create any rights in any individual or entity that is not a signatory hereto. No person who is not a party to this Agreement may bring a cause of action pursuant to this Agreement as a third-party beneficiary.
- (ee) **Funds Available for Payment of Grants.** The incentive grants payable by the City to Developer as more fully set forth in this Agreement are not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City. All incentive grant payments payable hereunder shall be paid only from funds of the City authorized by Article III, Section 52-a, of the Texas Constitution and Texas Local Government Code Chapter 380 or paid from funds authorized by the City pursuant to state law. Each incentive grant payment shall be subject to the City's appropriation of funds for such purpose to be paid in the budget year for which the incentive grant payment is to be made. Under no circumstances shall the City's obligations under this Article be deemed to create any debt within the meaning of any constitutional or statutory provision.
- (ff) **Remedies Cumulative.** The Parties hereby agree that each right and remedy of the Parties provided for in this Agreement shall be cumulative.

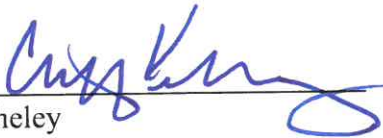
(gg) **Existing 380 Agreement.** The Parties hereby acknowledge that the terms of this Agreement shall apply to the Thirty-Three Acre Tract, and that the terms and provisions of the Existing 380 Agreement shall no longer apply to the Thirty-Three Acre Tract in any respect.

[The Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

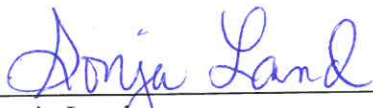
CITY:

CITY OF MESQUITE, TEXAS,
A Texas home-rule municipality



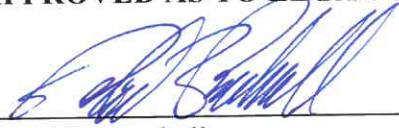
Cliff Keheley
City Manager

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:




David L. Paschall
City Attorney

DEVELOPER:

DG MESQUITE III PROPERTY OWNER, L.P.,
a Delaware limited partnership,

By: DG Mesquite III Property
Owner GP, LLC,
a Delaware limited liability company,
its general partner

By: 

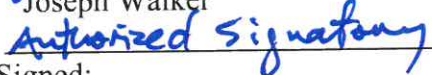
Joseph Walker
Title: 
Date Signed: _____

Exhibit A

[Qualified Expenditures]

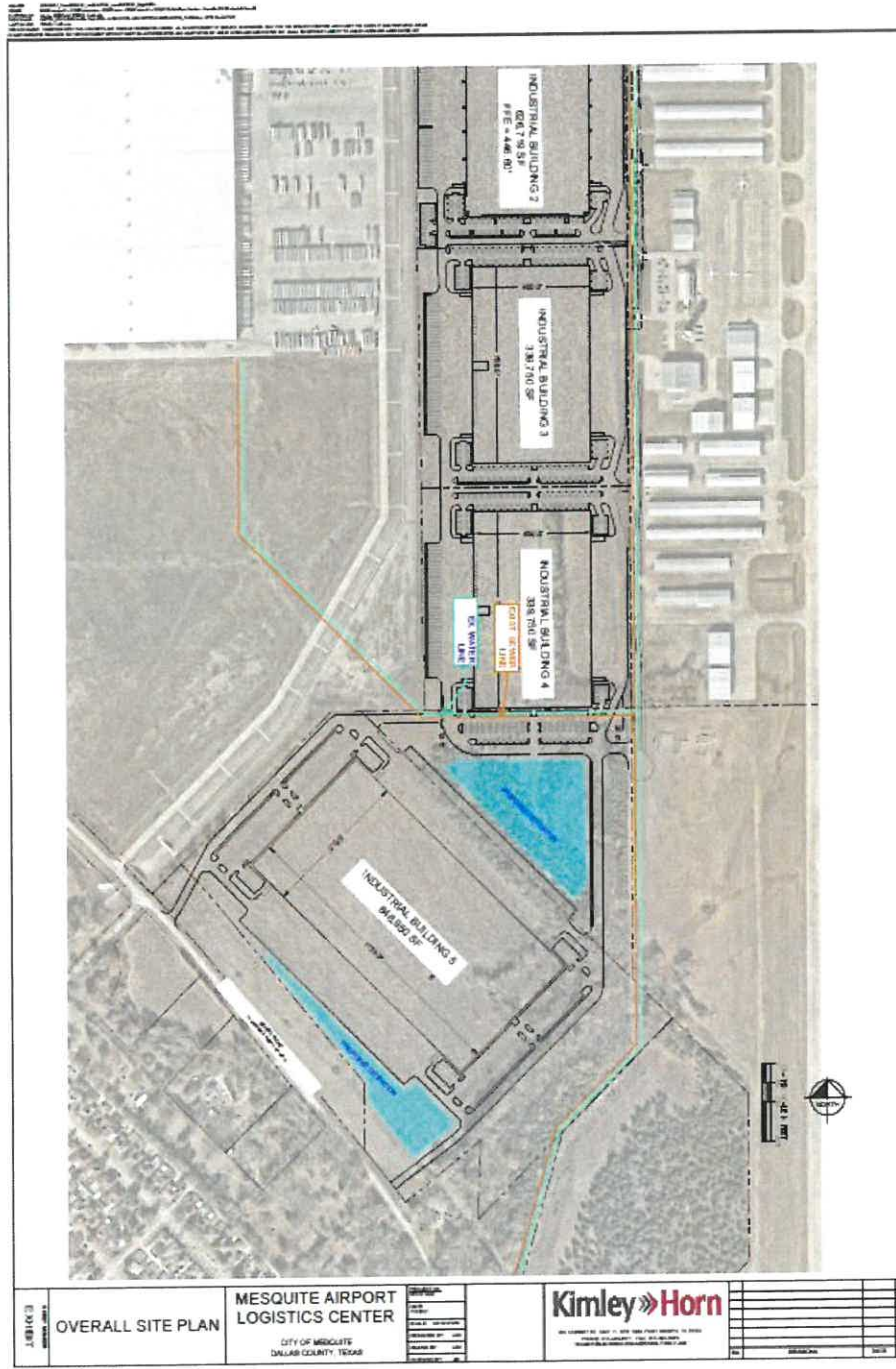




Exhibit B

[Legal Description and/or Depiction of
Forty-One Acre Tract]

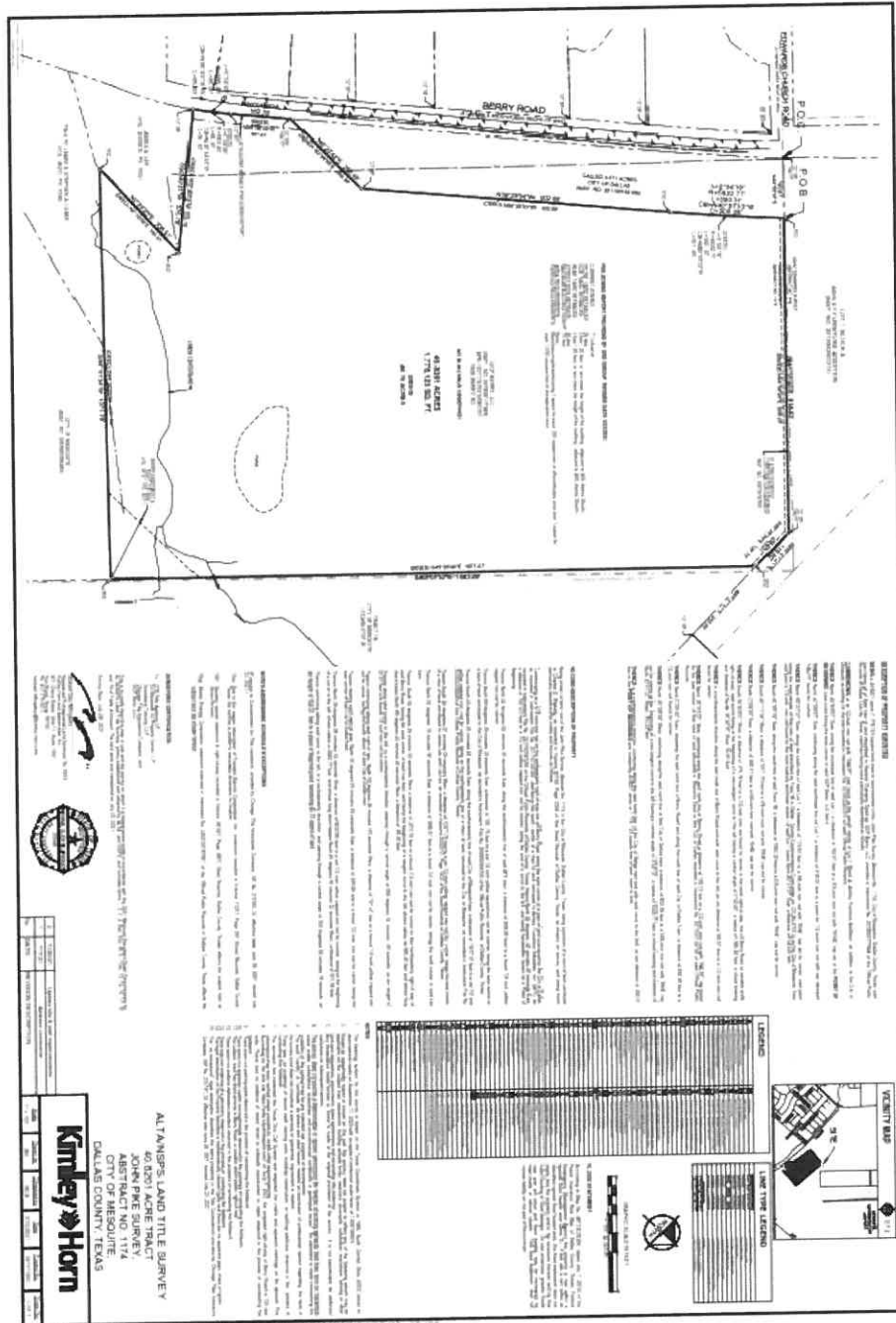


Exhibit C

[Legal Description and Depiction of
Thirty-Three Acre Tract]

BEING a tract of land situated in the William South Robinson Survey, Abstract No. 1262 and the Sam Houston Survey, Abstract No. 657, City of Mesquite, Dallas County, Texas, being part of a called 50.00 acre tract of land described in General Warranty Deed to the City of Mesquite recorded in Volume 95083, Page 253 of the Deed Records of Dallas County, Texas, said tract being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod with cap stamped "HALFF" found at the south corner of Lot 1, Block A, Ashley Furniture Addition, an addition to the City of Mesquite according to the plat recorded in Instrument No. 201900260315 of said Official Public Records;

THENCE North 44°55'07" East, along the southeast line of said Lot 1, Block A, a distance of 978.63 feet to a 1/2-inch iron rod with cap stamped "HALFF" found;

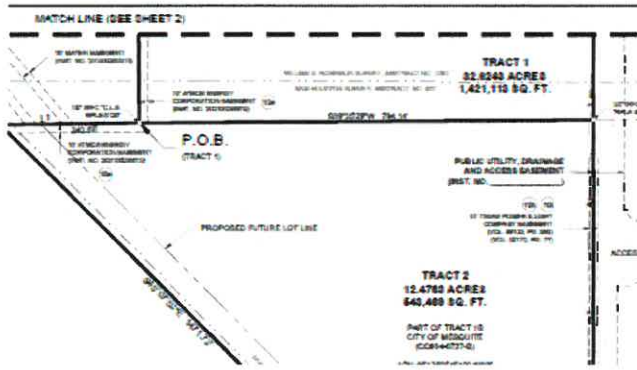
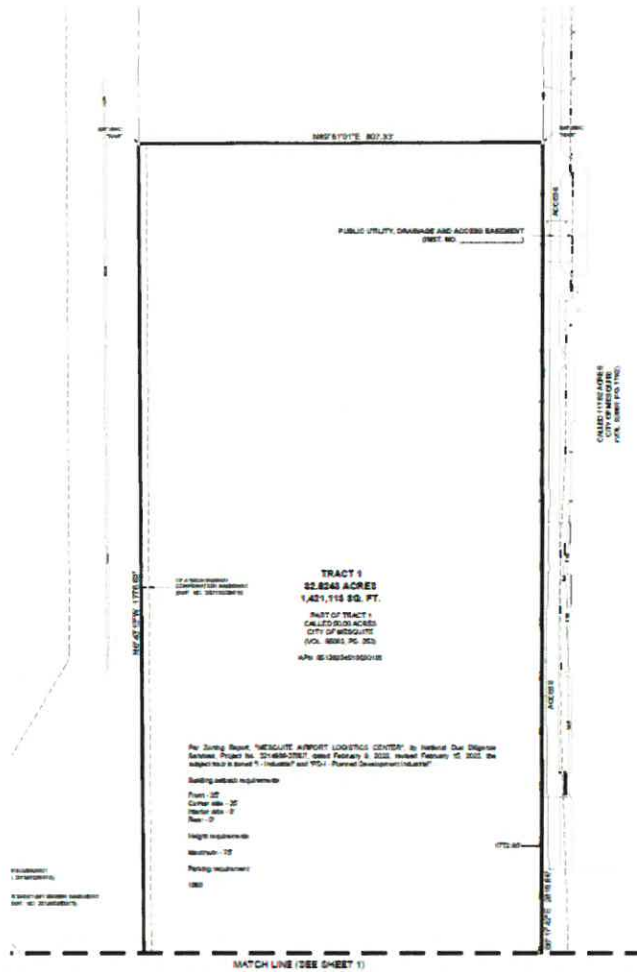
THENCE North 89°21'21" East, along the south line of said Lot 1, Block A, passing at a distance of 119.80 feet to a 5/8-inch iron rod with cap stamped "KHA" found for the northernmost northeast corner of a called 40.70 acre tract of land described in Special Warranty Deed to DG Mesquite III Property Owner, L.P. recorded in Instrument No. 202100234551 of the Official Public Records of Dallas County, Texas, continuing along the said south line of Lot 1, Block A, in all a total distance of 363.36 feet to the easternmost southeast corner of said Lot 1, Block A, and being the POINT OF BEGINNING;

THENCE North 00°43'13" West, along the east line of said Lot 1, Block A, a distance of 1776.63 feet to a 5/8-inch iron rod with cap stamped "KHA" found for corner;

THENCE departing the east line of said Lot 1, Block A, North 89°51'01" East, a distance of 807.33 feet to a 5/8-inch iron rod with cap stamped "KHA" found in the east line of said 50.00 acre tract;

THENCE South 00°17'42" East, along the said east line of the 50.00 acre tract, a distance of 1772.96 feet to a 1/2-inch iron rod with cap stamped "RPLS 3691" found for the southeast corner of said 50.00 acre tract;

THENCE South 89°35'29" West, along the south line of said 50.00 acre tract, a distance of 794.14 feet to the POINT OF BEGINNING and containing 1,421,113 square feet or 32.6243 acres of land, more or less.



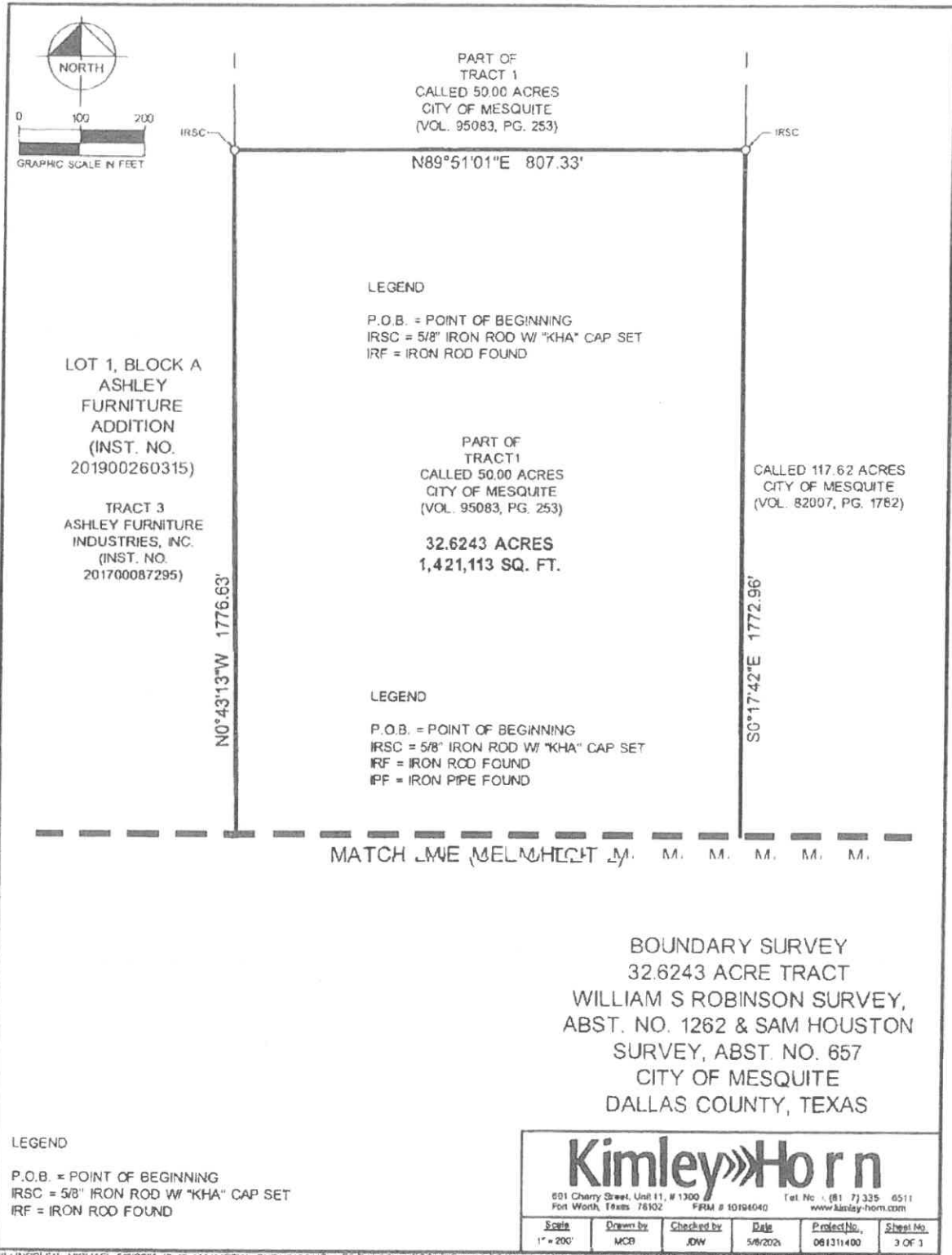


Exhibit D

[Legal Description and Depiction of 12.5 Acre Tract]

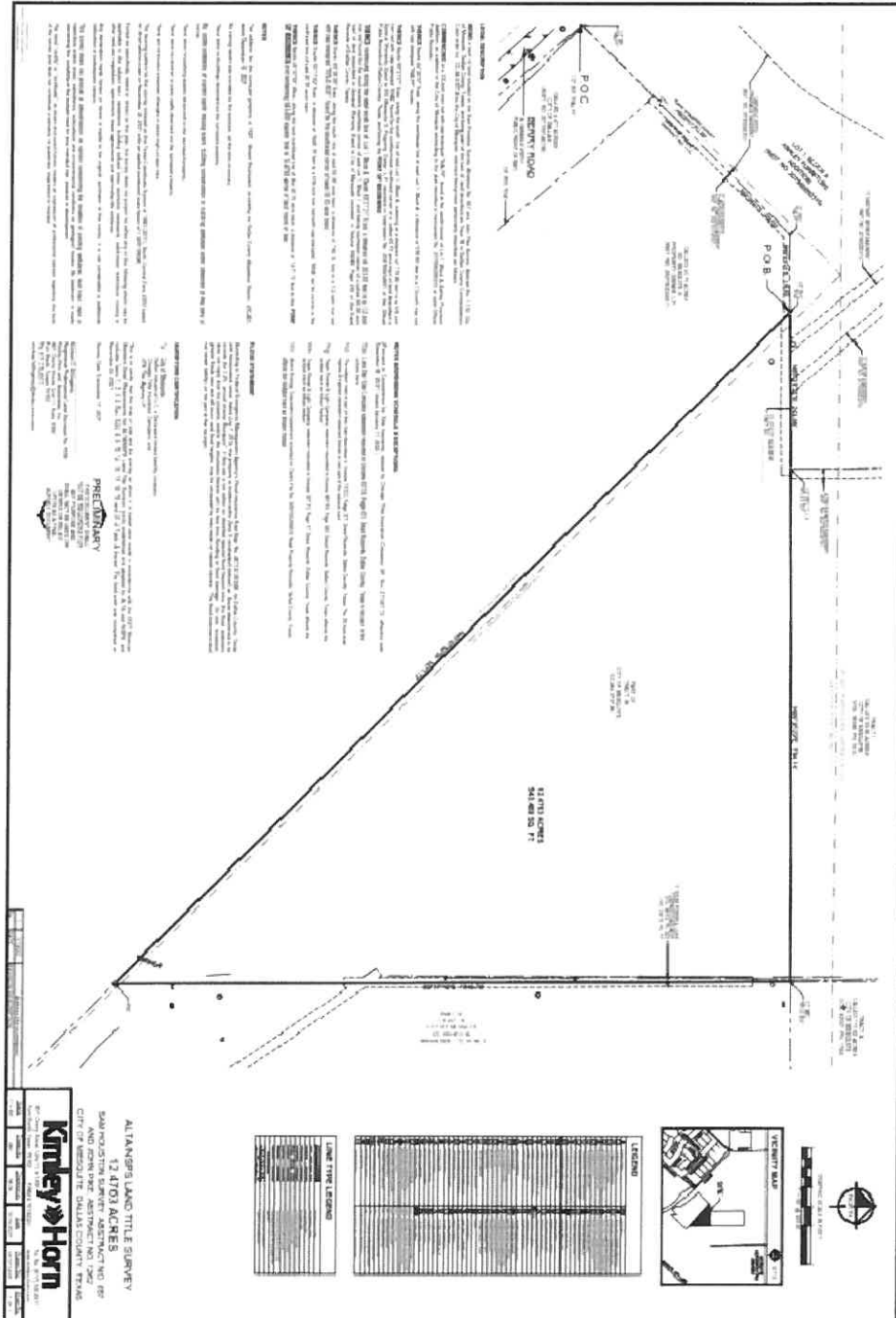


Exhibit E

[Depiction of Airport Boulevard Expenditures]

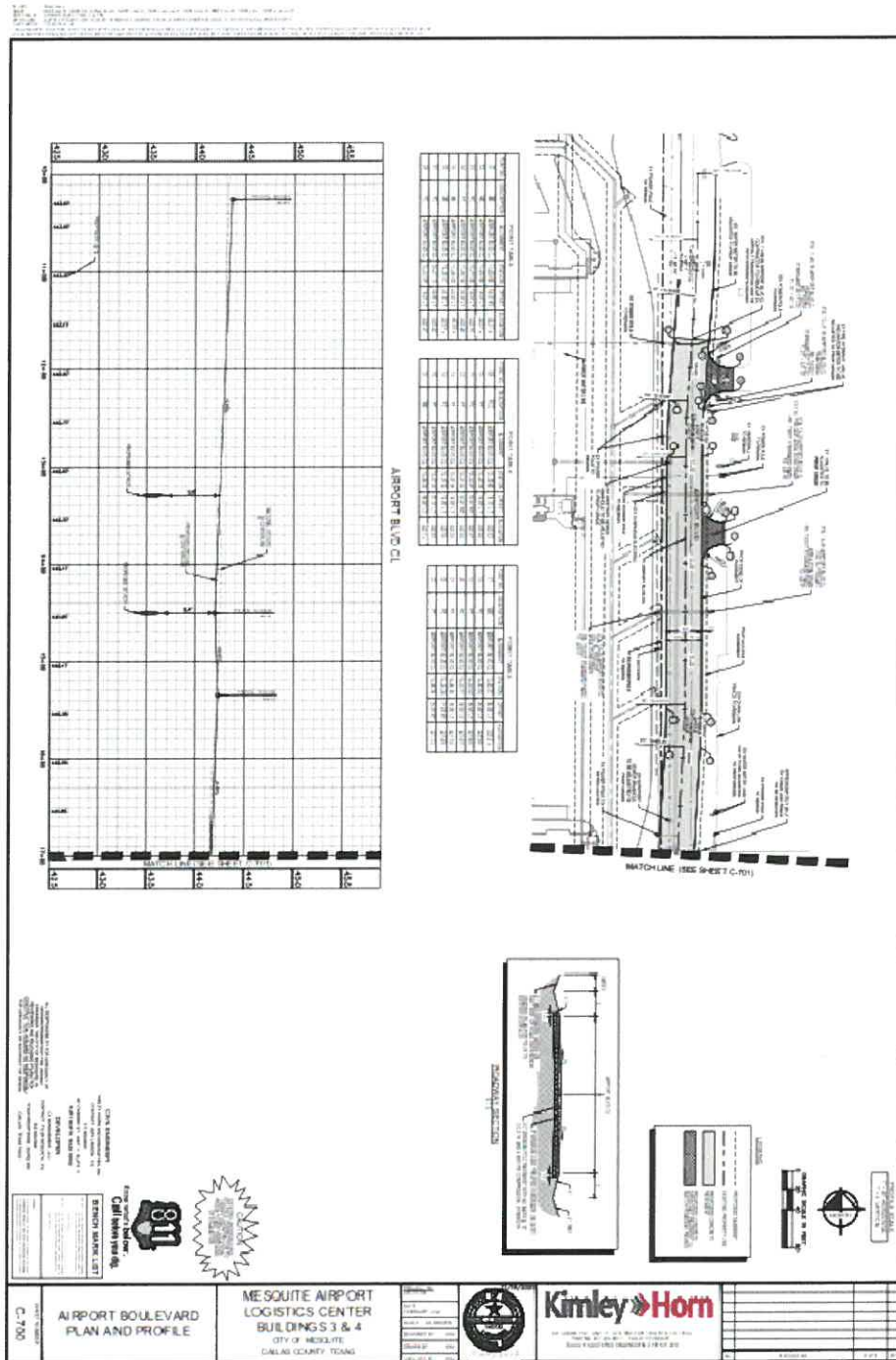


Exhibit F

[Berry Road Water Line]

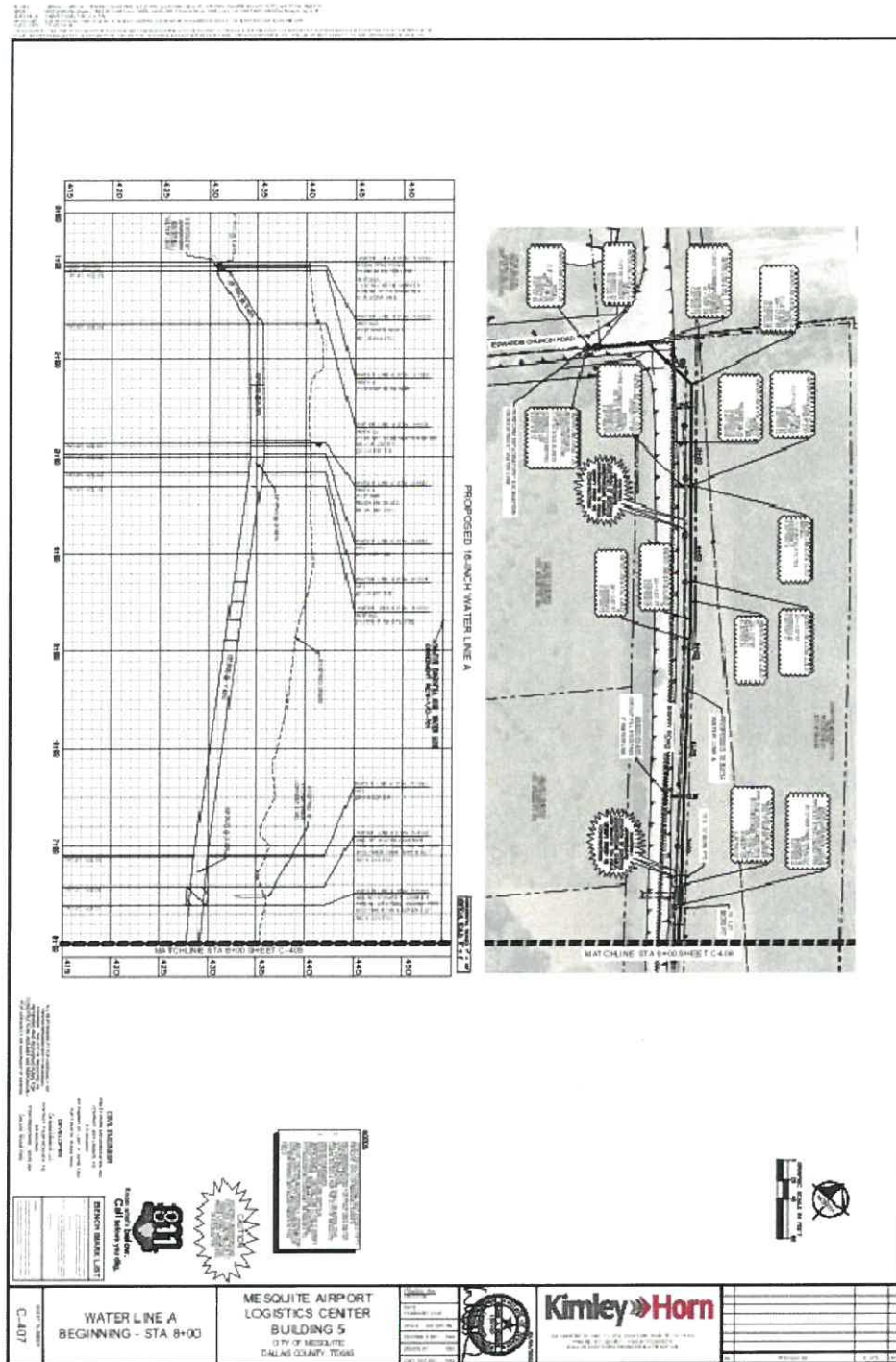


Exhibit G

[Façade/Elevation Plan]





Exhibit H

[Closeout and Acceptance Requirements]

City of Mesquite - Engineering Acceptance of Civil Construction:

June 30, 2015

In addition to proper completion of the construction shown on the engineering plans, there are several important administrative items that must be submitted and approved prior to City acceptance of the improvements and issuance of a Certificate of Occupancy for a project. These administrative items include:

- Record Drawings.** If changes to the “released” set of Engineering Plans are needed during construction, they must be submitted to the City Engineering Division for review and release. Both hard copy and electronic copy of record drawings are required prior to final acceptance. Requirements for records drawings can be obtained on the Engineering Division web page at:
<http://www.cityofmesquite.com/DocumentCenter/Home/View/417>
- Maintenance Bond** – a one-year maintenance bond for 10% of the cost of the public improvements (or a minimum of \$500.00) must be submitted to your assigned Engineering Division Public Works Construction Inspector.
- Acceptance Letter Request Form** – fill out this form and turn into your assigned Engineering Division Public Works Construction Inspector. This form is available at:
<http://www.cityofmesquite.com/DocumentCenter/Home/View/5128>
- All required **construction and material tests reports** have been successfully completed and witnessed by your inspector and related documentation of these tests submitted to your assigned Engineering Division Public Works Construction Inspector.
- All other project documentation complete, City invoices paid, etc.

Exhibit I

[Record Drawings and Plat Requirements]

**Interoffice
MEMORANDUM**

Updated: March 5, 2015

To: Private Developers, Consulting Engineers, Contractors and Engineering Division Staff
From: Matthew Holzapfel, P.E. - City Engineer
Subject: Requirements for Record Drawings and Plats for Private Development Projects

The contractor shall arrange an appointment with the assigned City Public Works Construction Inspector (PWCI) to review his "marked-up" field set of civil drawings prior to submitting to the consulting engineer. This "marked-up" field set should have notes and changes identified for all deletions, additions, change orders, addendums and other changes to the plans. This "marked-up" field set must be approved by the assigned PWCI. Once approved by the PWCI the contractor shall submit the "marked-up" field set to the consulting engineer who prepared the plans for preparation of record drawings and digital files that meet the below requirements.

Engineering Firms for Private Development Projects shall submit the following to the assigned City Public Works Construction Inspector:

Record Drawings (As-Builts):

- 2 Blackline (24" x 36" or 22" x 34") Copies & Associated Electronic Files.
 - These record drawings shall be sealed by the engineer of record in accordance with the Texas Board of Professional Engineers Policy Advisory Opinion Regarding Record (As-Built) Drawings – Issued February 8, 2007, available at web address (<http://www.tbpe.state.tx.us/nm/pa18.pdf>).
 - All sheets of the approved civil drawings with all details shall be included.
 - All changes shall be shown and noted in the revision block.
 - Revisions shall be drawn using accepted drafting standards and shall be neat and easily read and interpreted.
 - Line work and notes related to work deleted or changed shall be omitted from the drawing. **All information on the blackline copies shall be crisp with well defined lines and lettering. The information shall have high contrast and be capable of producing a high quality, legible microfilm and scanned image.**
 - An electronic copy of the record drawings shall be submitted on CD-ROM, DVD or flash drive in all the following digital formats:
 - AutoCAD (.dwg file format) - The .dwg files for the plan set may be in either model or paper space.
 - TIFF Class IV, 400 dpi format.
 - pdf format
 - The City Public Works Construction Inspector shall check that the above digital images are complete and correct and copy all the digital files to the network Q: drive in the project digital folder under a separate folder labeled *.rcd dwgs*.
 - The PWCI shall give the two blackline record drawing copies to the Engineering Division GIS staff for indexing, filming, scanning and placement in the City record drawing database. The GIS staff member receiving the blackline drawings and digital files on CD-ROM, DVD or flash drive from the PWCI shall sign and date the Project Final Acceptance Check-Off List. The Engineering Division GIS staff will also distribute one copy of the blackline record drawings to the Fire Marshall.

Plats:

- An electronic copy of the Final Plat (without signatures) must be submitted to the **Planning and Zoning Office** on CD-ROM in AutoCAD 2006 or later in **.dwg file format**. The AutoCAD drawing must be in "model-space". The plat must show two property corners in **grid coordinates**. Grid coordinates must be referenced to a City GPS point. The grid coordinates must be in North American Datum (NAD) 83, Texas State Plane, North Central FIPS Zone 4202. This electronic copy does not need a seal. This copy will be used by the GIS technicians to place the plat properly on the updated street maps.

No Certificate of Occupancy of any sort shall be approved by the Engineering Division until an acceptable set of record drawings and associated digital files are received and approved.

Exhibit J

[Development Standards]

1. Except as provided herein, the site plan for the Mesquite Facility shall conform substantially to the Concept Plan attached to the Agreement as Exhibit E. The orientation and location of structures, driveways and parking areas shown on Exhibit E may be modified to avoid conflict with utilities, floodplain and/or wetlands provided that parking and other development standards are met.
2. The façade of all buildings shall conform substantially to the elevations and exterior finish plans attached hereto as Exhibit G. The City Manager may approve modifications to the elevations and exterior finish plans necessitated by application of building codes.
3. Except for the restrictions provided in this paragraph, to which the Parties agree, neither the Agreement nor this Exhibit purports to modify the requirements or allowances of the Mesquite Zoning Ordinance, Appendix C to the Mesquite City Code ("MZO"), in any manner. As an inducement for the City to enter into the Agreement, Company agrees the following uses are prohibited within the Mesquite Facility:

178	Well Water Drilling
40	Railroad Passenger Terminal
5194	Tobacco, Tobacco Products
554	Limited Fuel Sales
593	Used Merchandise
5947	Gift, Novelty Stores
5993	Tobacco Stores
61	Nondepository Institutions, including Alternative Financial Institutions
72	Personal Services
738(c)	Bail Bond Services
7992	Golf Course
7997(b)	Country Clubs
842	Arboreta, Botanical Gardens
MZO 3-511	Paraphernalia Shop

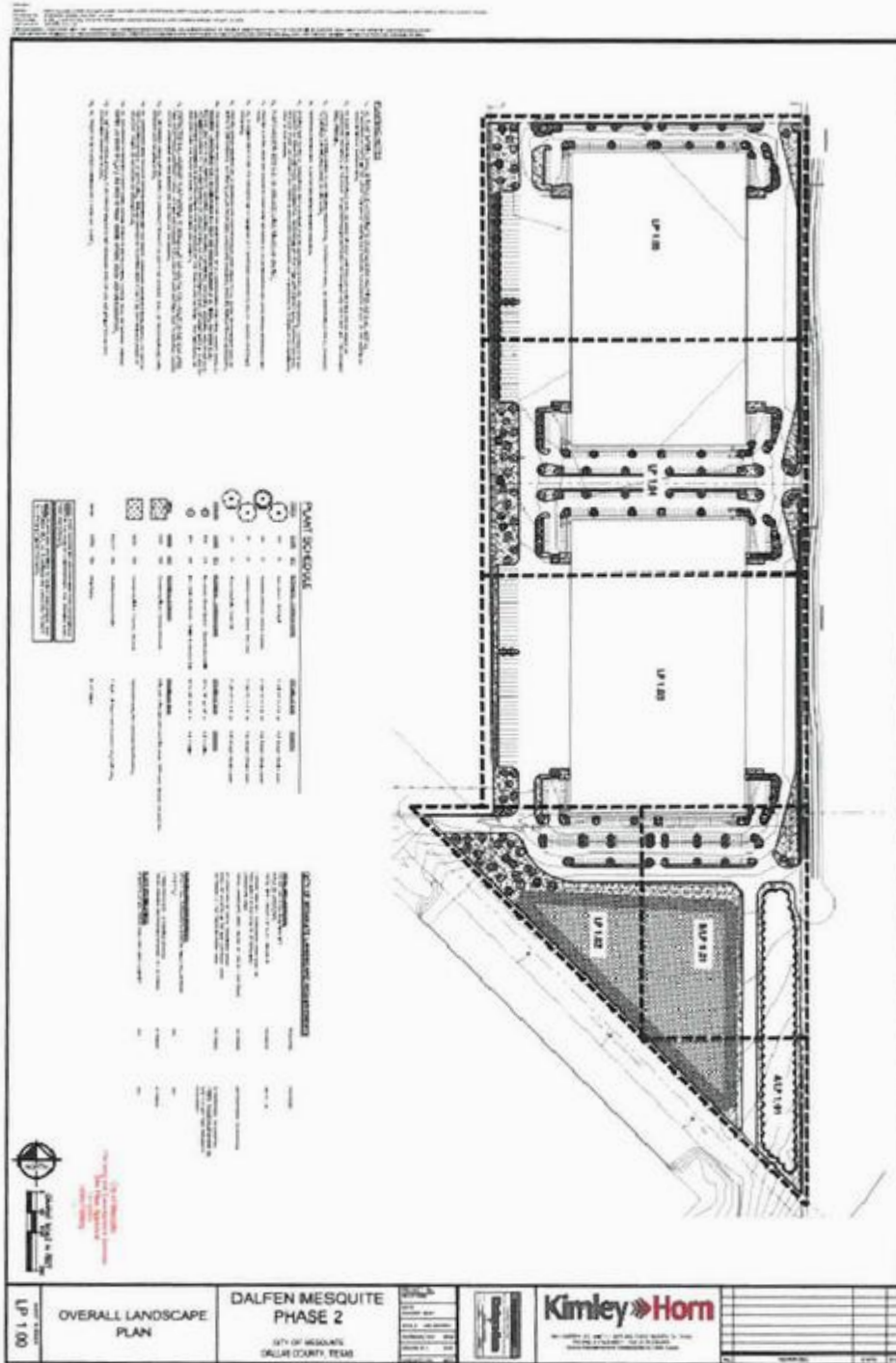
4. Outdoor storage as defined in MZO Section 3-600 shall be prohibited unless approved by CUP.
5. Development of the Mesquite Facility shall comply with the adopted City of Mesquite Engineering Design Manual.
6. No Certificate of Occupancy shall be issued for a multi-tenant industrial business park in the Mesquite Facility until Company has complied with Article VII of the Agreement.
7. No owner of a premises, or operator or manager-on-duty of any use within the Mesquite Facility, shall allow any unmounted trailer to be parked or stored on the premises, or suffer or permit the owner or driver of a heavy load vehicle to park or store an unmounted trailer on the

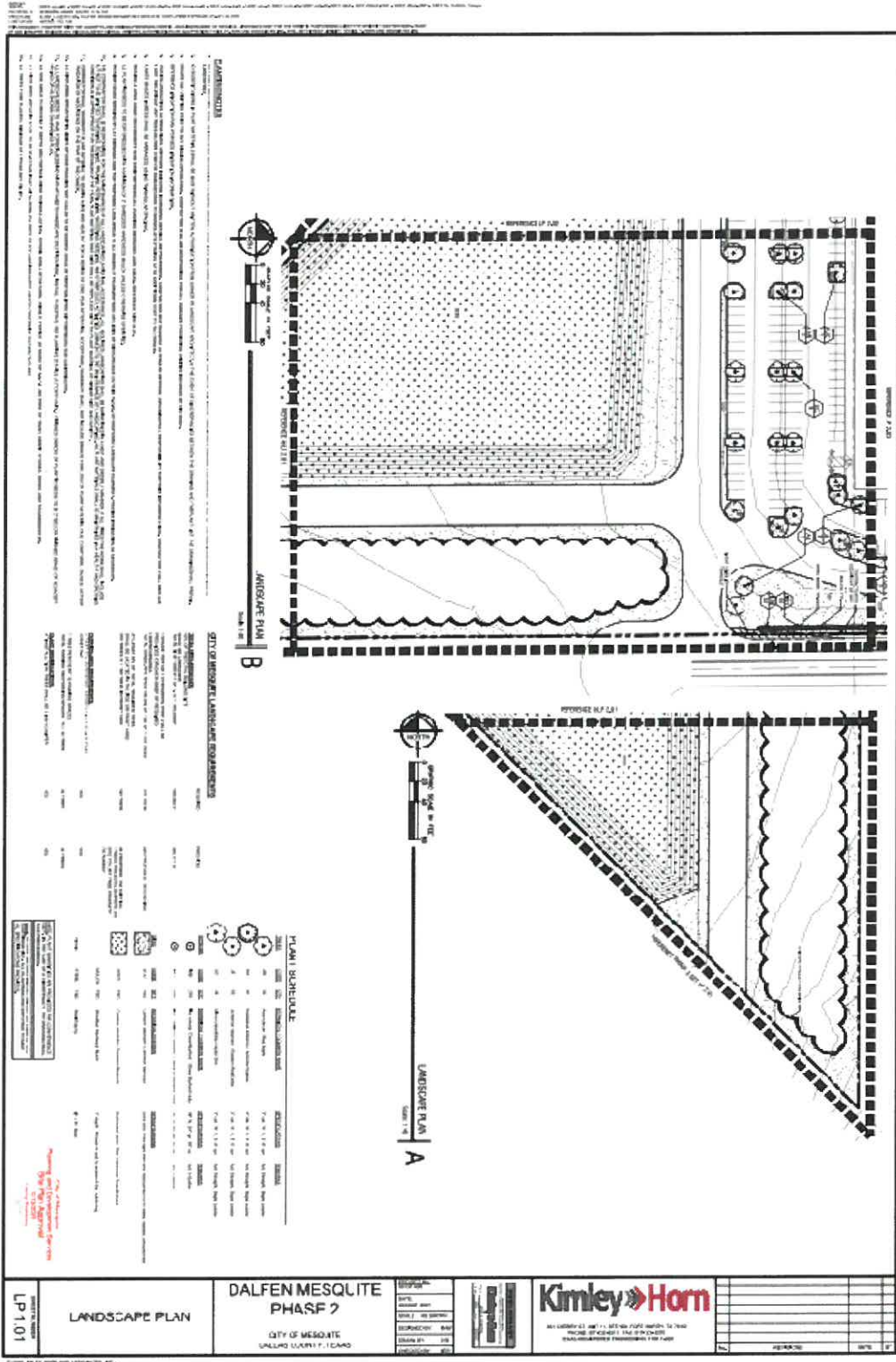
premises, unless the parking or storage of unmounted vehicles is expressly authorized on the certificate of occupancy and the parking or storage is in compliance with any conditions therein, or unless the parking or storage is incidental to a use authorized on the certificate of occupancy.

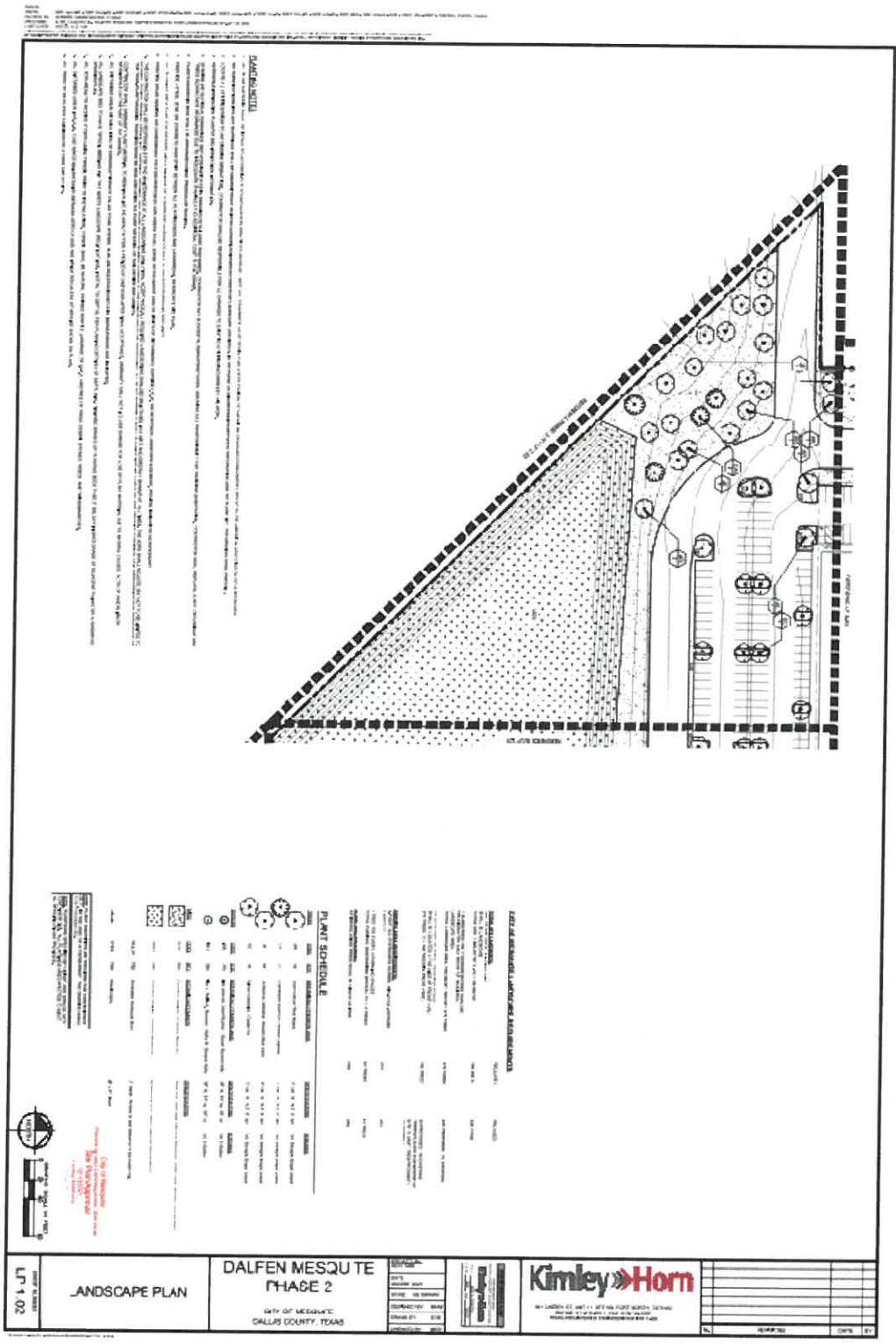
8. Exterior lighting is not required except for purposes of public safety. However, if installed, all exterior lighting shall meet the following design standards.
 - a. Light sources shall be concealed or shielded with luminaries with shielding, skirts or cut-offs with an angle not exceeding ninety (90) degrees to minimize the potential for glare and unnecessary diffusion on adjacent properties. For purposes of this provision, "cut-off angle" is defined as the angle formed by a line drawn from the direction of light rays at the light source or reflector, and a line perpendicular to the ground from the light source above from which no light is emitted.
 - b. In no case shall exterior lighting add more than one (1) footcandle to illumination levels at any point off-site.
 - c. All outdoor light not necessary for security purposes shall be reduced, activated by motion sensor detectors, or turned off during non-operating hours.
 - d. Light fixtures used to illuminate flags, statues or any other objects mounted on a pole, pedestal or platform shall use a narrow cone beam of light that will not extend beyond the illuminated object.
 - e. For upward-directed architectural, landscape and decorative lighting, direct light emissions shall not be visible above the building roof line.
 - f. No flickering or flashing lights shall be permitted, except for temporary decorative seasonal lighting.
 - g. Lighting shall conform to all applicable Federal Aviation Administration requirements, if any, including but not limited to FAA Advisory Circular AC 70/7460-1M Obstruction Marking and Lighting.

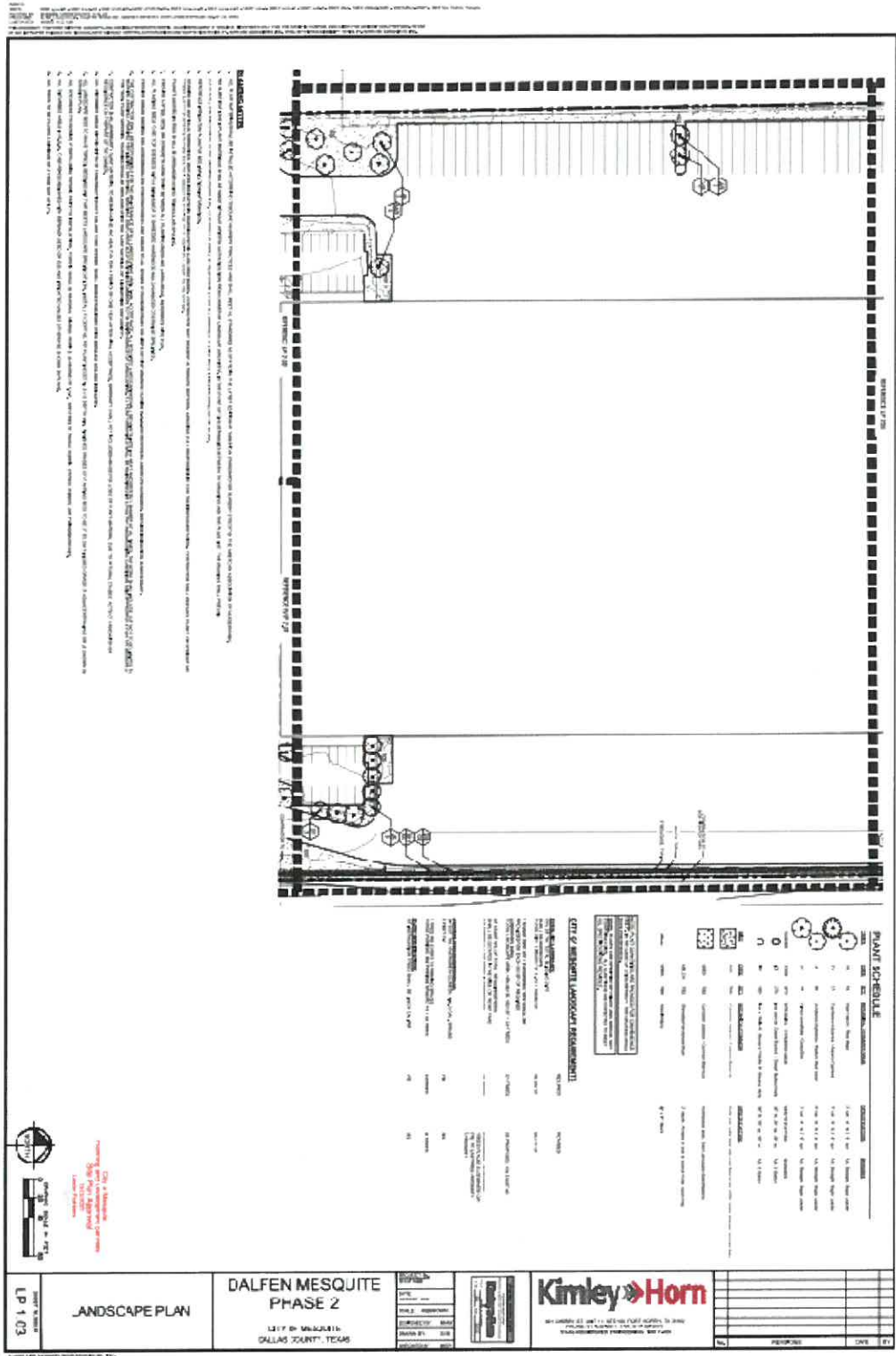
Exhibit K

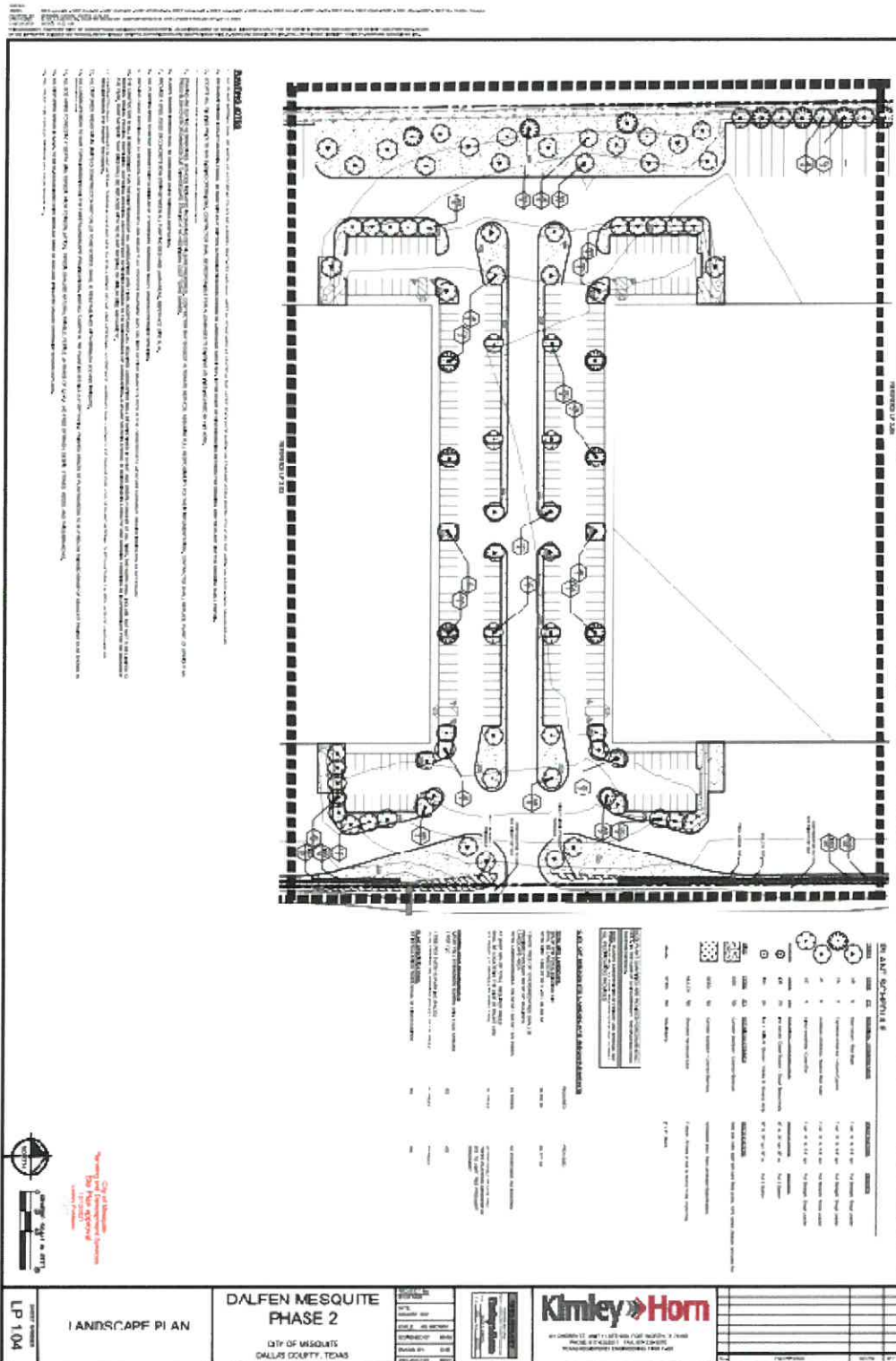
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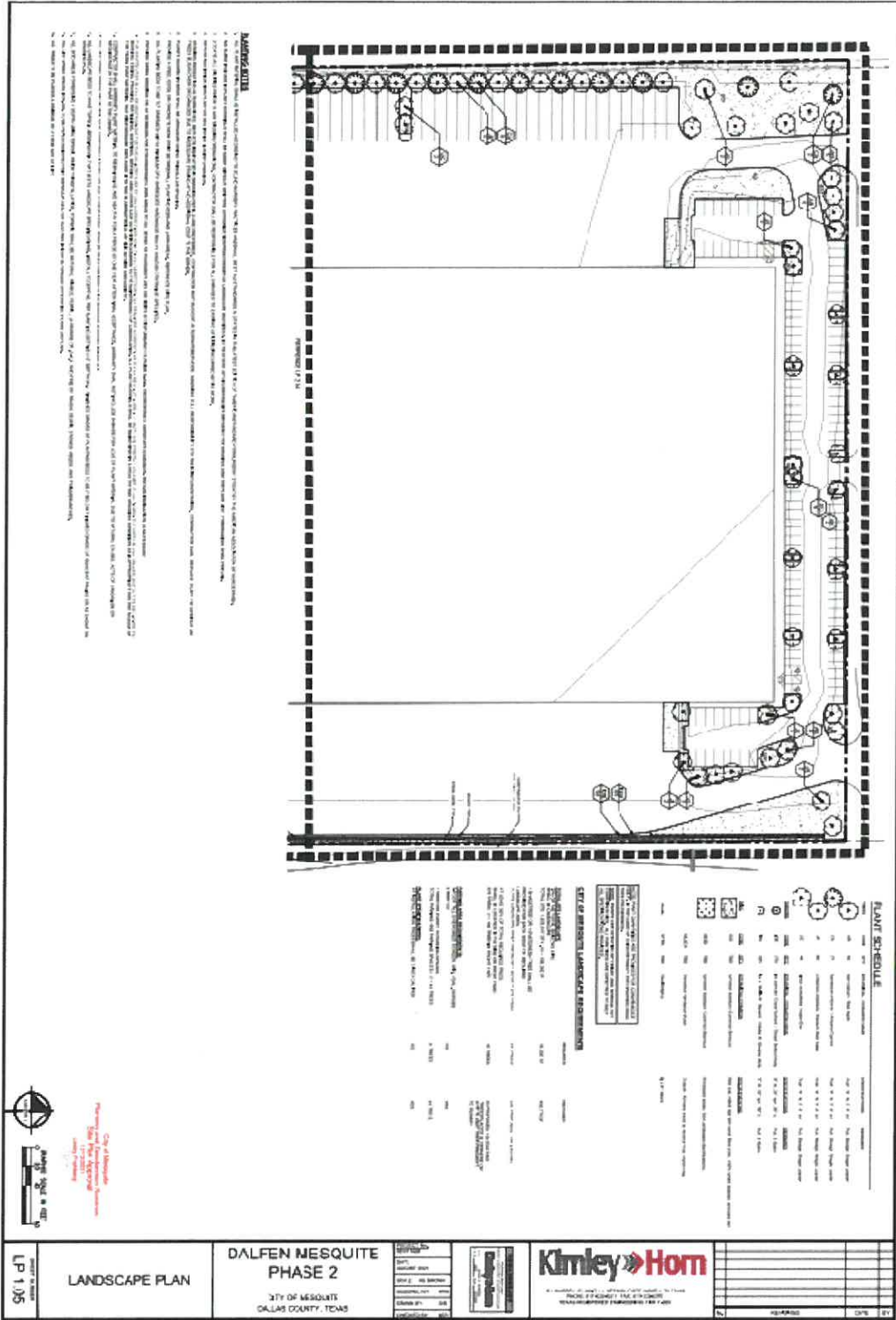


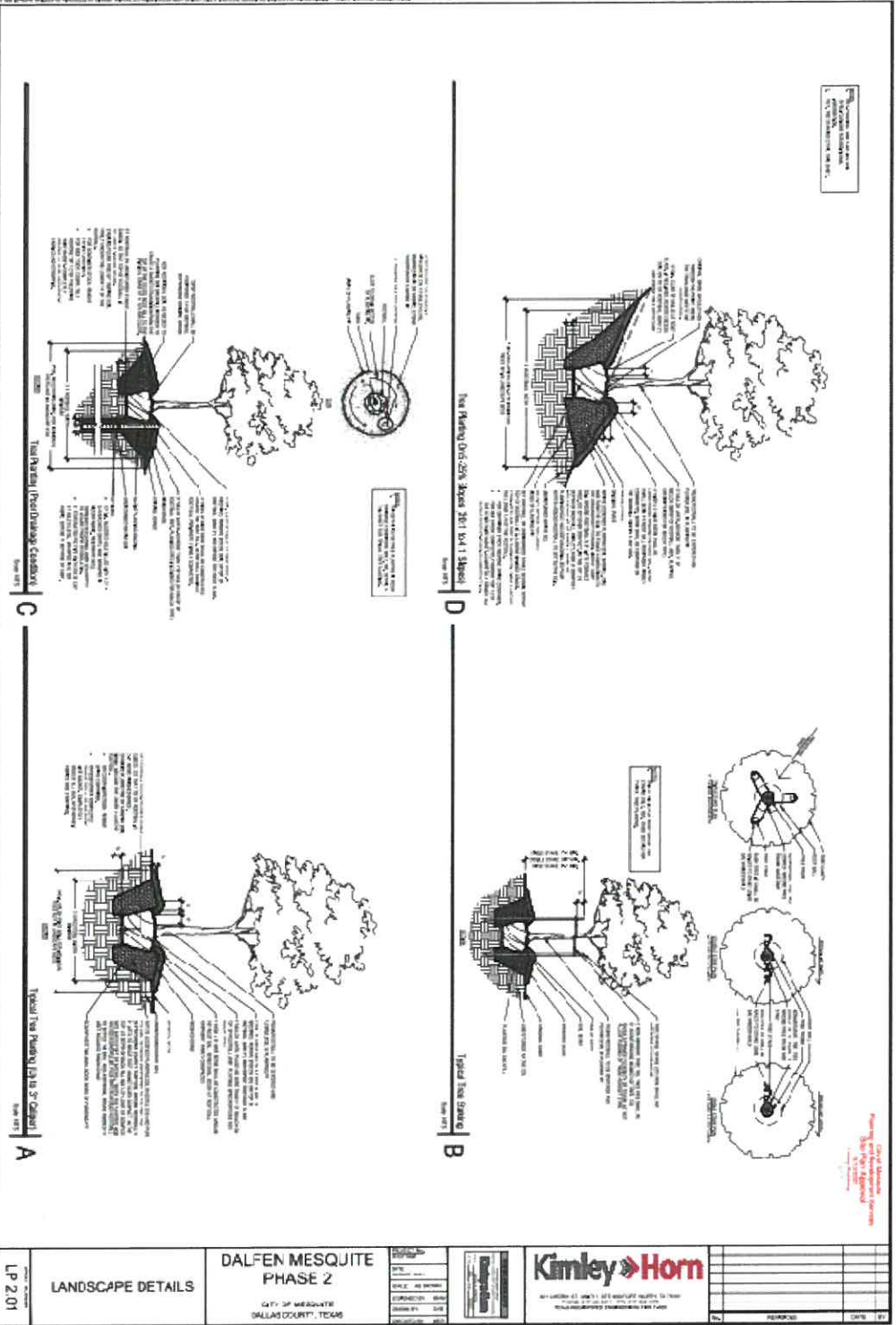


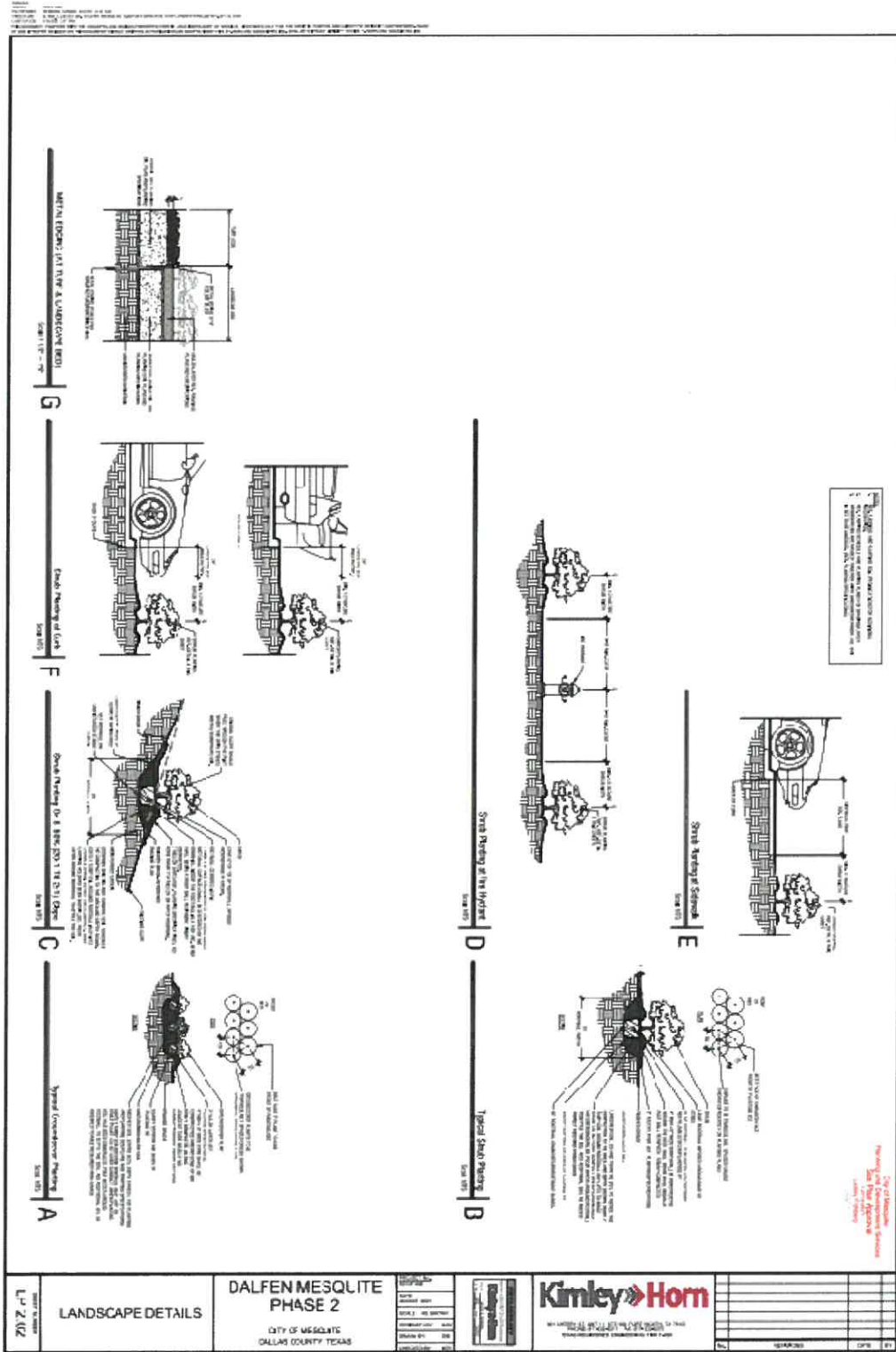




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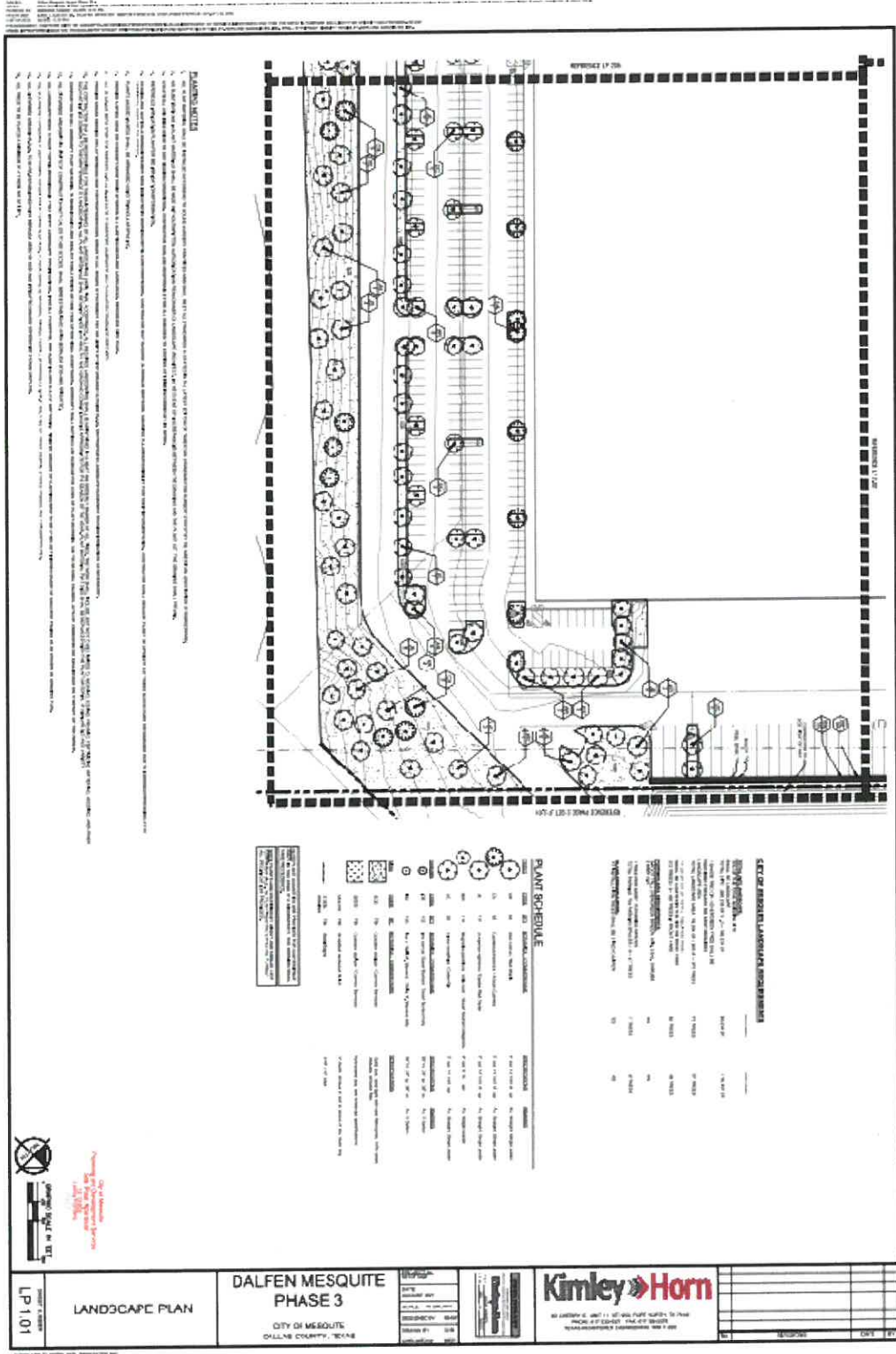
REVISION SELECTION SHEET

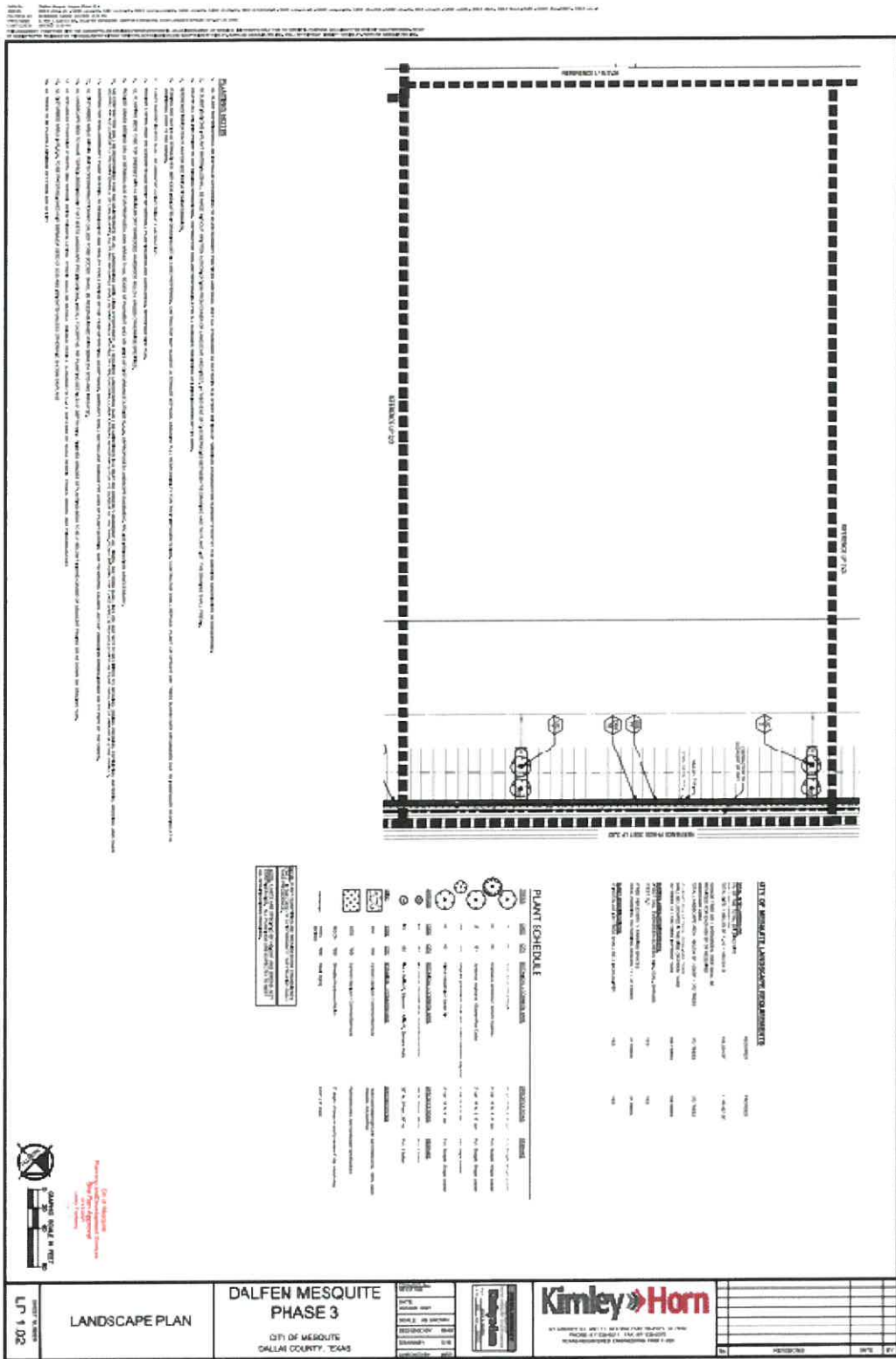
LANDSCAPE SPECIFICATIONS
DALFEN MESQUITE PHASE 2
 CITY OF MESQUITE
 DALLAS COUNTY, TEXAS

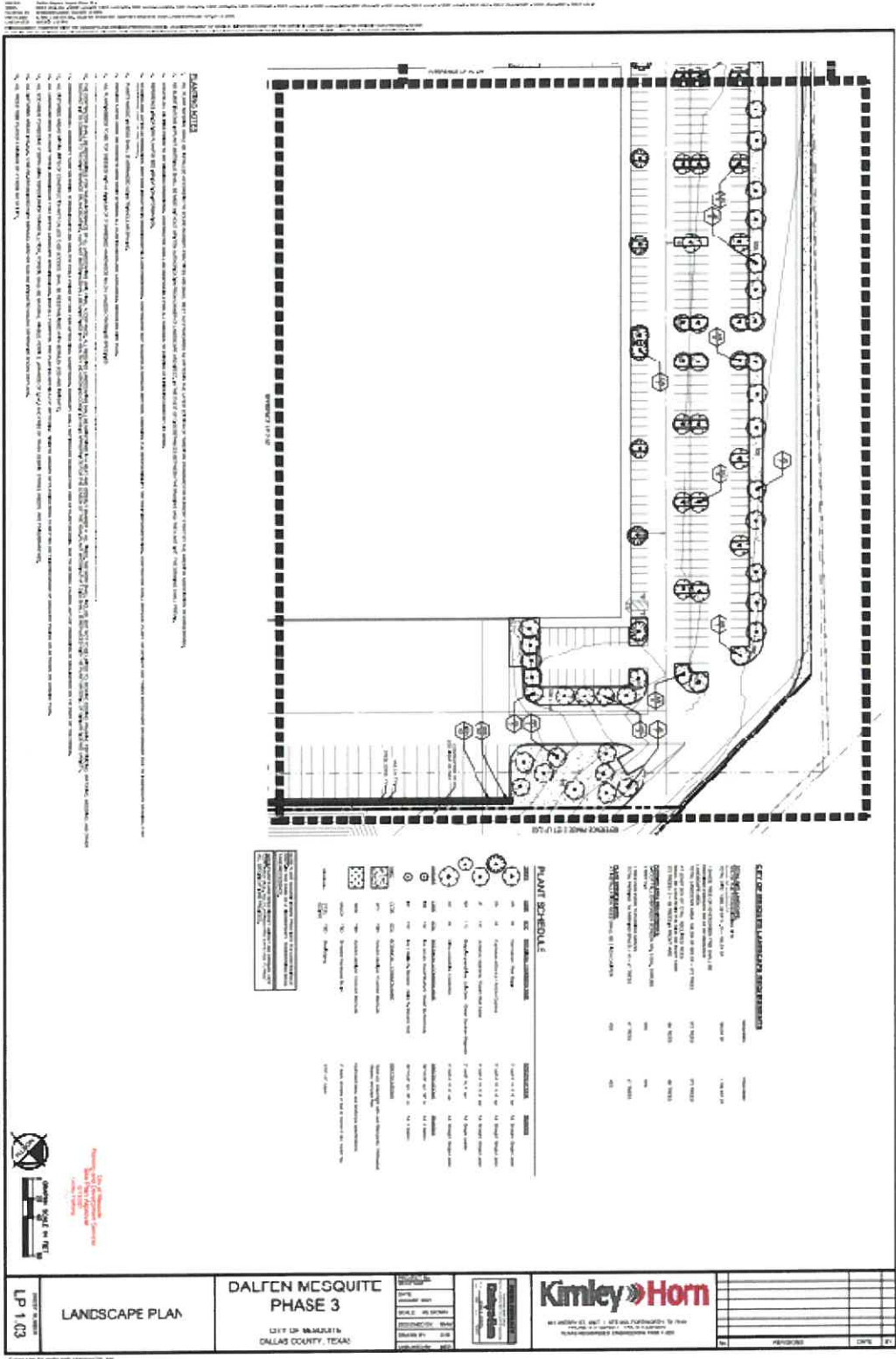
Kimley-Horn
 4100 N. CENTRAL EXPRESSWAY, SUITE 300
 DALLAS, TEXAS 75245
 TEL: 972.968.6000
 WWW.KIMLEY-HORN.COM

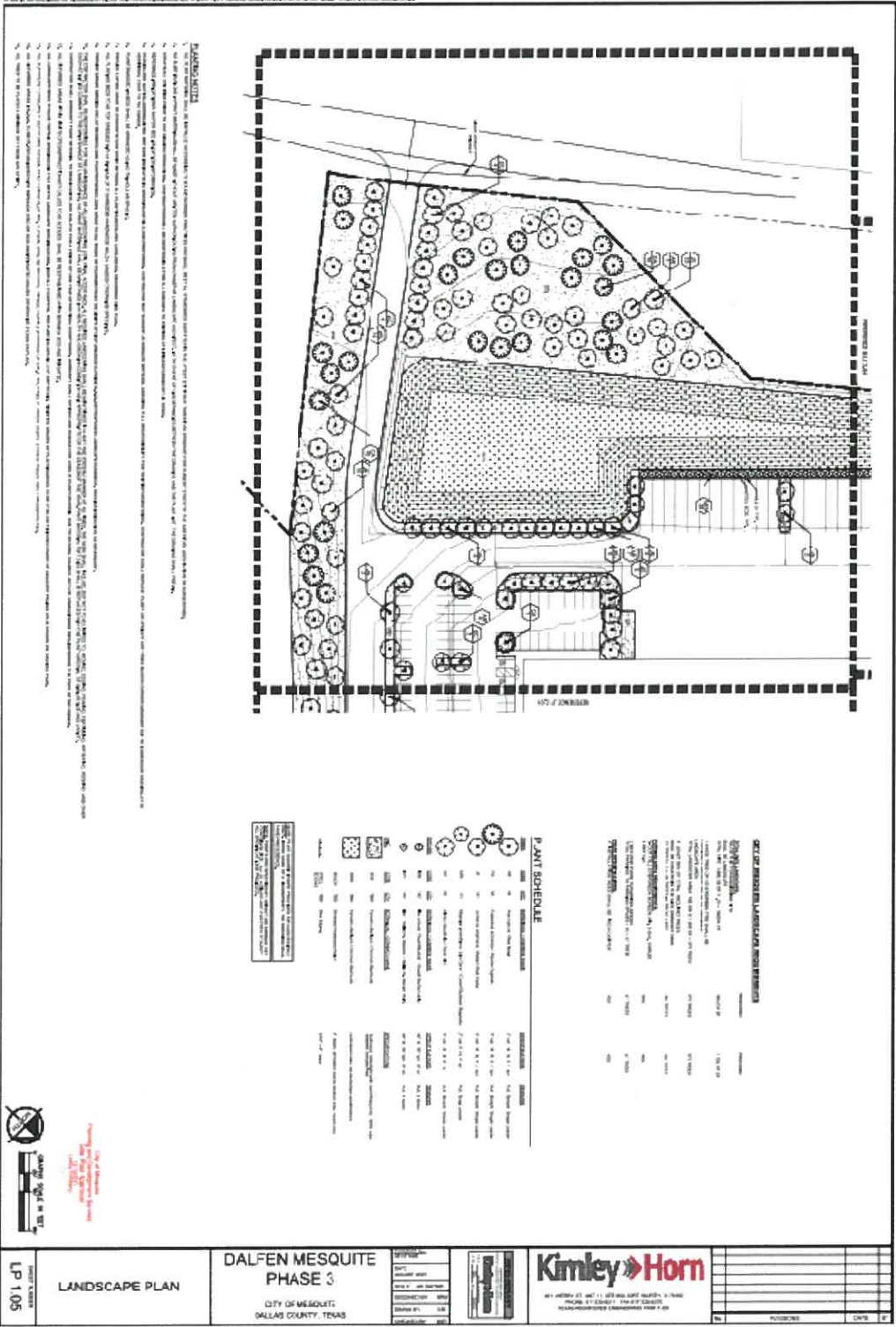
PROJECT: DLFEN MESQUITE PHASE 2
 SHEET: LANDSCAPE SPECIFICATIONS
 DATE: 02/11/2022
 DRAWN BY: JLR
 CHECKED BY: JLR

DLFEN PHASE 2		
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1. DRAFTING: [Name]
 2. CHECKING: [Name]
 3. APPROVAL: [Name]

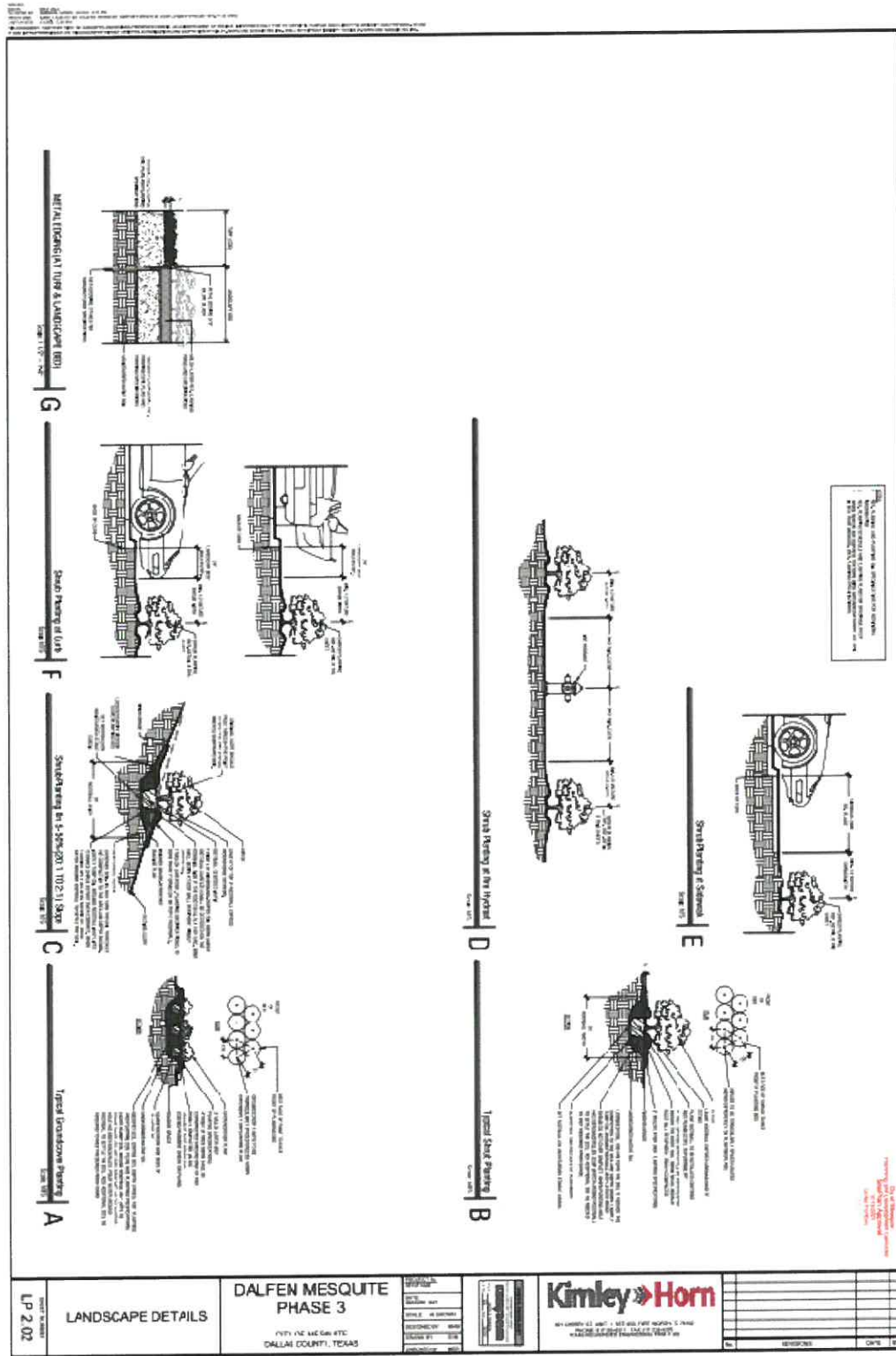
TOP VIEW OF 30% SHADE (20' x 11' SHADE)

TOP VIEW OF 30% SHADE (20' x 11' SHADE)

TYPICAL TREE SHADE (30' x 30' SHADE)

TYPICAL TREE SHADE (30' x 30' SHADE)

LP 20'	LANDSCAPE DETAILS	DALFEN MESQUITE P-HAZE 3 CITY OF MESQUITE DALLAS COUNTY, TEXAS	
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LANDSCAPE SPECIFICATIONS

DALFEN MESQUITE PHASE 3

CITY OF MESQUITE
DALLAS COUNTY, TEXAS

Kimley-Horn

107.47

2/11/2022 4:18:38 PM

62897415

ACTIVE 62897415

City of Mesquite, Texas and DG MESQUITE III PROPERTY OWNER, L.P.
 Chapter 380 Economic Development Program and Agreement
 2/11/2022 4:18:38 PM
 62897415
 ACTIVE 62897415



City of Mesquite, Texas

Legislative File

File Number: 21-5675

File ID: 21-5675

Type: Agenda Item

Status: Public Hearing

Version: 1

Org Code(s):

In Control: City Council

File Name: Chapter 380 - DG Mesquite III Property Owner, L.P.

File Created: 09/30/2021

Final Action:

Title: Conduct a public hearing and consider a resolution approving the terms and conditions of a program to promote local economic development and stimulate business and commercial activity in the City, authorizing the City Manager to finalize and execute an Economic Development Program Agreement (Chapter 380 Agreement) for such purposes with DG Mesquite III Property Owner, L.P. (Mesquite Airport Logistics Center), for the development of approximately 89 acres of real property located at 1900 Airport Boulevard and 1800 Berry Road, in the City of Mesquite, Texas, and the exercise of option to purchase approximately 48 acres of City-owned property, and authorizing the City Manager to administer the agreement on behalf of the City.

Agenda Date: 02/21/2022

Agenda Number: 30

Text of Legislative File 21-5675

Title

Conduct a public hearing and consider a resolution approving the terms and conditions of a program to promote local economic development and stimulate business and commercial activity in the City, authorizing the City Manager to finalize and execute an Economic Development Program Agreement (Chapter 380 Agreement) for such purposes with DG Mesquite III Property Owner, L.P. (Mesquite Airport Logistics Center), for the development of approximately 89 acres of real property located at 1900 Airport Boulevard and 1800 Berry Road, in the City of Mesquite, Texas, and the exercise of option to purchase approximately 48 acres of City-owned property, and authorizing the City Manager to administer the agreement on behalf of the City.

Body

On September 20, 2021, City staff briefed the City Council on a proposed Phase Two Development Agreement with Dalfen Industrial for the construction of three additional industrial buildings between Scylene Road and Berry Road, just west of the Mesquite Municipal Airport. Dalfen Industrial has a significant track record of industrial development in the Dallas/Fort Worth area and throughout the country and recently completed the two distribution facilities on Kearney Street, just west of Collins Road/SH 352 called the East Dallas Logistics Center and has two Phase One buildings under construction at this time at Airport Logistics Center.

Dalfen’s proposed Phase Two development includes three buildings, two planned for 339,750 square

feet each, and one for 648,950 square feet. As part of this development, Dalfen is proposing to extend Airport Boulevard to allow access to each of the three buildings and upsize a City water line along Berry Road. Dalfen is seeking to purchase a 33-acre portion of City-owned property directly to the south of their property to maximize the development of their project for which they have a right of first refusal per a Chapter 380 Agreement approved by the City Council on May 3, 2021, and a 15-acre portion of airport property for detention area purposes.

The resolution will authorize the City Manager to finalize and execute the Chapter 380 Agreement with DG Mesquite III Property Owner, L.P., which is Dalfen's entity constructing this property. The agreement outlines the City's and Dalfen's obligation and responsibilities for the project which includes the developer's obligation to construct the buildings as identified in the concept plan, the purchase of the City-owned properties for approximately \$2.4 million, the construction of the Airport Boulevard extension and upsizing of the Berry Road water line. The City will support this development by granting the cost of the City property back to the developer upon completion of project milestones, and up to \$250,000.00 rebate of development fees.

Recommended/Desired Action

Staff recommends approval of the resolution.

Attachment(s)

Resolution

Drafter

Kim Buttram

Head of Department

Kim Buttram